

# **EXHIBIT 15**

CM-110

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kevin T. Barnes Kevin T. Barnes (SB# 138477) Law Offices of Kevin T. Barnes 5670 Wilshire Blvd., Ste. 1460 Los Angeles, CA 90036 TELEPHONE NO.: (323) 549-9100 FAX NO. (Optional): (323) 549-0101 E-MAIL ADDRESS (Optional): barnes@kbarnes.com ATTORNEY FOR (Name): Plaintiff	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 N. Hill Street MAILING ADDRESS: 111 N. Hill Street CITY AND ZIP CODE: Los Angeles, CA BRANCH NAME: Central	
PLAINTIFF/PETITIONER: JOSE JIMENEZ, on behalf of himself and all others similarly situated, DEFENDANT/RESPONDENT: SEARS, ROEBUCK AND CO., a New York corporation; and DOES 1 to 100, inclusive	
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)	CASE NUMBER:  BC383006

A CASE MANAGEMENT CONFERENCE is scheduled as follows:  
 Date: April 25, 2008 Time: 8:30 a.m. Dept.: 45 Div.: Room:  
 Address of court (if different from the address above):

**INSTRUCTIONS:** All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
  - a. ☒ This statement is submitted by party (name): Jose Jimenez
  - b. ☐ This statement is submitted jointly by parties (names):
  
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
  - a. The complaint was filed on (date): December 28, 2007
  - b. ☐ The cross-complaint, if any, was filed on (date):
  
3. **Service (to be answered by plaintiffs and cross-complainants only)**
  - a. ☒ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
  - b. ☐ The following parties named in the complaint or cross-complaint
    - (1) ☐ have not been served (specify names and explain why not):
    - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
    - (3) ☐ have had a default entered against them (specify names):
  - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
  
4. **Description of case**
  - a. Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):  
 Plaintiffs seek recovery for unpaid wages and penalties for Defendant's violation of various Labor Codes and Business & Professions Code Section 17200, et seq.

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PLAINTIFF/PETITIONER: JOSE JIMENEZ, on behalf of himself and all others similarly situated, DEFENDANT/RESPONDENT: SEARS, ROEBUCK AND CO., a New York corporation; and DOES 1 to 100, inclusive	CASE NUMBER:  BC383006
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4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*  
Plaintiff brings this action against Defendant Claire's for recovery of unpaid straight time, minimum wages, overtime wages meal periods, rest periods, business expenses, bonus deductions and penalties under California Business and Professions Code ("B&PC") §17200, et seq., California Labor Code ("Labor Codes") §204, §510, §1198, §1197, §226, §203 and applicable Wage Order(s) issued by the California Industrial Welfare Commission.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☒ a jury trial ☐ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

a. ☐ The trial has been set for *(date)*:

b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

a. ☒ days *(specify number)*: 30 days

b. ☐ hours *(short causes) (specify)*:

8. **Trial representation *(to be answered for each party)***

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

e. Fax number:

f. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative Dispute Resolution (ADR)**

a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.

b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date)*:

c. ☐ The case has gone to an ADR process *(indicate status)*:

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CASE NUMBER:

BC383006

## 10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☒ Mediation  
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)  
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)  
 (4) ☐ Binding judicial arbitration  
 (5) ☐ Binding private arbitration  
 (6) ☐ Neutral case evaluation  
 (7) ☐ Other (specify):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.  
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.  
 g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

## 11. Settlement conference

- ☐ The party or parties are willing to participate in an early settlement conference (specify when):

## 12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):  
 b. Reservation of rights: ☐ Yes ☐ No  
 c. ☐ Coverage issues will significantly affect resolution of this case (explain):

## 13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (specify):

Status:

## 14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.  
 (1) Name of case:  
 (2) Name of court:  
 (3) Case number:  
 (4) Status:

☐ Additional cases are described in Attachment 14a.

- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

## 15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

## 16. Other motions

- ☒ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):  
 Plaintiffs Motion for Class Certification.

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corporation; and DOES 1 to 100, inclusive

CASE NUMBER:

BC383006

**17. Discovery**

- a. ☐ The party or parties have completed all discovery.  
b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

Party	Description	Date
Plaintiff	Written and document discovery	December 2008
Plaintiff	Deposition(s)	December 2008

- c. ☐ The following discovery issues are anticipated (*specify*):

**18. Economic Litigation**

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.  
b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

**19. Other issues**

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

**20. Meet and confer**

- a. ☐ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):  
b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

**21. Case management orders**

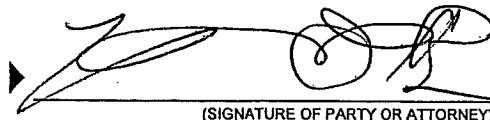
Previous case management orders in this case are (*check one*): ☐ none ☐ attached as Attachment 21.

22. Total number of pages attached (*if any*): \_\_\_\_\_

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: April 8, 2008

Kevin T. Barnes, Esq.  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am over the age of 18 years and not a party to this action. My business address is 5670 Wilshire Boulevard, Suite 1460, Los Angeles, California 90036-5627, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I served the attached document(s) described as:

**CASE MANAGEMENT STATEMENT**

on the interested parties in this action, addressed as follows:

Jessie A. Kohler, Esq.  
Hwannie Lee Shen, Esq.  
WINSTON & STRAWN LLP  
333 South Grand Avenue, 38th Floor  
Los Angeles, CA 90071  
Tel.: (213) 615-1700 / Fax: (213) 615-1750  
Email: HShen@winston.com

Joseph Antonelli, Esq.  
Janelle Carney, Esq.  
LAW OFFICE OF JOSEPH ANTONELLI  
1000 Lakes Drive, Suite 450  
West Covina, CA 91790-2918  
Tel.: (626) 917-6228 / Fax: (626) 917-7686  
Email: JAntonelli@antonellilaw.com

using the following service method(s):

**X VIA MAIL:** I deposited the document(s) to be served at: **5670 Wilshire Boulevard, Los Angeles, CA**, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on April 8, 2008, at Los Angeles, California.

  
Cindy Rivas

# **EXHIBIT 16**

COPY

Winston & Strawn LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543

JESSIE A. KOHLER (SBN 179363)  
JULIA LAPIS BLAKESLEE (SBN 199365)  
HWANNIE L. SHEN (SBN 222342)  
AUDREY SHEN CHUI (SBN 254510)  
WINSTON & STRAWN LLP  
333 South Grand Avenue, 38th Floor  
Los Angeles, CA 90071-1543  
Telephone: 213-615-1700  
Facsimile: 213-615-1750

Attorneys for Defendant  
SEARS, ROEBUCK AND CO.

ORIGINAL FILED  
APR 10 2008  
LOS ANGELES  
SUPERIOR COURT

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

JOSE JIMENEZ, on behalf of himself and all  
others similarly situated,

Plaintiffs,

vs.

SEARS, ROEBUCK AND CO., a New York  
corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. BC 383006

Assigned to the Honorable Mel Red Recana

STIPULATED CONFIDENTIALITY AND  
PROTECTIVE ORDER; AND

~~PROPOSED~~ ORDER



1 WHEREAS, Plaintiff Jose Jimenez and Defendant Sears, Roebuck and Co. are conducting  
2 pretrial discovery in the above-captioned litigation; and

3 WHEREAS, this discovery may require the disclosure of testimony, documents or other  
4 information considered by Defendant to contain confidential, private, proprietary and/or trade secret  
5 information relating to Defendant and/or any current or former employee of Defendant; and

6 WHEREAS, the parties wish to provide a mechanism for the exchange of such information  
7 in a manner that will protect its confidentiality and limit its dissemination;

8 THE PARTIES THEREFORE STIPULATE AND AGREE AS FOLLOWS:

9 1. For the purposes of this Stipulation and Order the term CONFIDENTIAL  
10 INFORMATION shall mean:

11 a. Information, including information contained in documents and other  
12 materials, including without limitation, answers to interrogatories, responses to requests for  
13 production of documents and responses to requests for admission which have been produced, or  
14 which may be produced or disclosed or otherwise provided by any party to this litigation or by its  
15 attorneys (or by any current or former officer, director, employee, attorney, consultant, expert, agent  
16 or other representative) when so designated by the producing party in response to a notice of  
17 deposition, subpoena *duces tecum* or any provision of the California Rules of Civil Procedure  
18 governing pretrial discovery, the trial and appeal of this action; and which the producing party  
19 reasonably believes contains proprietary, confidential, private, or trade secret information of the  
20 producing party and/or any current or former employee of the producing party, or whose disclosure  
21 could result in competitive, financial, personal, or commercial injury to the producing party;

22 b. Deposition testimony given in this litigation by Defendant or its current or  
23 former officers, directors, employees, attorneys, consultants, experts, agents, or other representatives  
24 when so designated by the producing party; and which Defendant reasonably believes contains  
25 proprietary, confidential, private, or trade secret information of Defendant and/or an employee of  
26 Defendant, or whose disclosure could result in competitive, financial, personal, or commercial injury  
27 to Defendant or an employee of Defendant;

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Los Angeles, CA 90071-1543

c. Documents, materials or testimony, all copies or portions of transcripts, and all summaries and abstracts of any information contained therein, whether produced by Defendant or a third party to this action, when so designated by Defendant and which Defendant reasonably believes contains proprietary, confidential, private, or trade secret information of a party and/or any current or former employee, or whose disclosure could result in competitive, financial, personal, or commercial injury to affected party.

2. CONFIDENTIAL INFORMATION in written or documentary form shall be designated as CONFIDENTIAL INFORMATION by the producing party by marking each page of the writing or document with the legend "CONFIDENTIAL."

3. The provisions of this Stipulation and Order may also apply to other copies of documents designated as "CONFIDENTIAL," and testimony related thereto, which have been produced or which may be produced or disclosed during the course of this litigation by a third person or entity possessing such documents, materials or information in the Court or during pretrial discovery of this action when so designated by a party.

4. CONFIDENTIAL INFORMATION may be used only for purposes of prosecuting or defending this action and may not be disclosed to any person other than:

a. Counsel of record for Plaintiff and Defendant in this litigation, and their partners, employees or associates to whom such disclosure is reasonably deemed necessary by such counsel for the conduct of this litigation;

b. Plaintiff, Defendant, and Defendant's officers, directors and employees who are assisting counsel, but only to the extent that such disclosure is reasonably deemed necessary by such counsel for the conduct of this litigation, and provided further that a party (or its officers, directors or employees) may retain CONFIDENTIAL INFORMATION only so long as necessary for the conduct of this litigation;

c. Court Reporters while in the performance of their official duties;

d. This Court or referee or any other court appointed referee before whom or which this litigation is pending, including any court or arbitration personnel; and

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 333 South Grand Avenue  
 Los Angeles, CA 90071-1543

e. The person(s) who actually prepared the CONFIDENTIAL INFORMATION, or to whom the CONFIDENTIAL INFORMATION was addressed or delivered, but only to the extent that such disclosure is necessary for the conduct of this litigation and provided that such persons may not retain any CONFIDENTIAL INFORMATION.

5. The provisions of this Stipulation and Order shall not apply to the designating party's own use of its CONFIDENTIAL INFORMATION.

6. Prior to the disclosure of any CONFIDENTIAL INFORMATION to any person identified in paragraphs 4(b) or (c) hereof, such person shall be furnished with a copy of this Stipulation and Order and shall be required to certify in writing that he or she has read this Stipulation and Order, understands it, and agrees to be bound by its terms and subjects himself or herself to the jurisdiction of this Court for the purpose of contempt proceedings in the event of any violation of this Stipulation and Order. Counsel for the party disclosing CONFIDENTIAL INFORMATION shall maintain these written certifications, and they shall be available to opposing counsel for inspection and copying. In the event that disclosure is made to an undisclosed expert or consultant retained by that party in connection with the litigation, the identity of the undisclosed expert is that party attorney's work product and need not be disclosed to opposing counsel even though the expert or consultant signs a written certification. Nevertheless, counsel for the party disclosing CONFIDENTIAL INFORMATION shall produce for inspection and copying, upon request by the other party, the written certification executed by the undisclosed expert or consultant with that person's name redacted.

7. It shall be Defendant's duty to inform Plaintiff which materials are to be treated as CONFIDENTIAL INFORMATION by so denominating such information.

8. If Plaintiff intends to use CONFIDENTIAL INFORMATION in connection with a motion or other court hearing, Plaintiff must comply with California Rules of Court Rule 2.551.

9. If Plaintiff intends to use CONFIDENTIAL INFORMATION at trial, he shall notify Defendant of such intention at the same time that he is required to disclose the documents which will be used at trial. The parties shall address with the Court how the CONFIDENTIAL INFORMATION is to be treated at trial.

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1           10. In the event that any of the information protected by the terms of this Stipulation and  
2 Order is used in any proceeding in this action, including, without limitation, any hearing or trial, the  
3 information shall not lose its confidential and privileged status through such use, and counsel shall  
4 take all steps reasonably required to protect the confidentiality of such document or testimony during  
5 such use.

6           11. No person shall make copies, extracts or summaries of CONFIDENTIAL  
7 INFORMATION except under the supervision of counsel when, in the judgment of counsel, such  
8 copies or other papers are necessary for the conduct of this litigation. Each such copy or other paper  
9 shall be conspicuously marked with an appropriate legend signifying confidential status. Counsel  
10 and all persons to whom CONFIDENTIAL INFORMATION is disclosed shall take reasonable and  
11 appropriate precautions to avoid loss and/or inadvertent disclosure of such material.

12           12. This Stipulation and Order shall be without prejudice to Plaintiff's right to bring  
13 before this Court at any time the question of whether any particular information is or is not  
14 discoverable or relevant to any issue in this case, is subject to a valid claim of attorney-client  
15 privilege, work product protection, or any other privilege, or whether any particular document or  
16 information should or should not be designated as CONFIDENTIAL INFORMATION for the  
17 purposes of this Stipulation and Order.

18           13. Notwithstanding the entry by the parties hereto into this Stipulation and Order,  
19 nothing prohibits Defendant from objecting to the disclosure of proprietary, confidential, private, or  
20 trade secret information, if requested by Plaintiff through discovery or otherwise, or from seeking a  
21 further protective order prohibiting the disclosure of such information.

22           14. Nothing contained in this Stipulation and Order shall be construed in any manner as  
23 an admission by Defendant that the documents or materials subsequently designated or labeled by a  
24 party as CONFIDENTIAL INFORMATION in fact contain proprietary, confidential, private, or  
25 trade secret information.

26           15. Nothing contained in this Stipulation and Order shall be construed to constitute a  
27 waiver of Defendant's right to claim that a document not designated as CONFIDENTIAL  
28

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Los Angeles, CA 90071-1543

1 INFORMATION is in fact CONFIDENTIAL INFORMATION within the terms of this Stipulation  
2 and Order.

3 16. This Stipulation and Order shall not prevent the marking or the exhibition to a witness  
4 (other than a witness who is also an opposing party), or the offering in evidence of any  
5 CONFIDENTIAL INFORMATION during depositions, hearings or other pretrial proceedings, at  
6 trial, or on appeal, but no copy of any CONFIDENTIAL INFORMATION shall be retained by any  
7 such witness. Nothing in this Stipulation and Order shall be read to require a formal order of the  
8 Court prior to use of such CONFIDENTIAL INFORMATION, so long as its use is consistent with  
9 the terms of this Stipulation and Order.

10 17. Except as otherwise may be agreed by the parties, but not later than sixty (60) days  
11 after the termination of this litigation, whether by settlement, judgment or appeal, all copies of  
12 CONFIDENTIAL INFORMATION shall be returned to counsel for Defendant or destroyed, except  
13 for material reasonably considered by Plaintiff's counsel to be his work product. Plaintiff's counsel  
14 shall permanently obliterate or excise all CONFIDENTIAL INFORMATION contained in any such  
15 retained work product. Counsel shall certify in writing to opposing counsel that all  
16 CONFIDENTIAL INFORMATION has been returned or destroyed.

17 18. CONFIDENTIAL INFORMATION shall not be used or disclosed for any purpose  
18 whatsoever except the conduct of this litigation.

19 19. The Court shall retain jurisdiction of all matters pertaining to this Stipulation and  
20 Order, and each party, person or entity signing a copy of this Stipulation and Order.

21  
22 Dated: April 8, 2008

WINSTON & STRAWN LLP  
JESSIE A. KOHLER  
JULIA LAPIS BLAKESLEE

23  
24  
25 By: 

Jessie A. Kohler  
Attorneys for Defendant  
SEARS, ROEBUCK AND CO.

04/07/2008 12:25 FAX 323 5

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KEVIN T. BARNES

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Dated:

4/7/08

LAW OFFICES OF KEVIN T. BARNES  
KEVIN T. BARNES  
GREGG LANDER

LAW OFFICE OF JOSEPH ANTONELLI  
JOSEPH ANTONELLI  
JANELLE CARNEY

By:

  
Gregg Lander  
Attorneys for Plaintiff  
JOSE JIMENEZ

GOOD CAUSE APPEARING, IT IS SO ORDERED.

Dated:

APR 10 2008.

MEL RED RECANA

Hon. Judge Mel Red Recana

Winston & Strawn LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543

6  
PROTECTIVE ORDER

LA:209512.1

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STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

) ) ss

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Winston & Strawn LLP, 333 South Grand Avenue, Los Angeles, CA 90071-1543. On **April 8, 2008**, I served the within document(s):

## STIPULATED CONFIDENTIALITY AND PROTECTIVE ORDER; AND

## [PROPOSED] ORDER



by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California, addressed as set forth below.



On April \_\_\_, 2008, I sent such document(s) from facsimile machine 213-615-1750. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine 213-615-1750 which confirms said transmission and receipt.



by causing to be personally delivered the document(s) listed above to the person(s) at the address(es) set forth below.



by causing the document(s) listed above to be delivered via overnight delivery (Federal Express) to the person(s) at the address(es) set forth below.



by causing the document(s) listed above to be delivered via overnight delivery (United Parcel Service (UPS) to the person(s) at the address(es) set forth below.

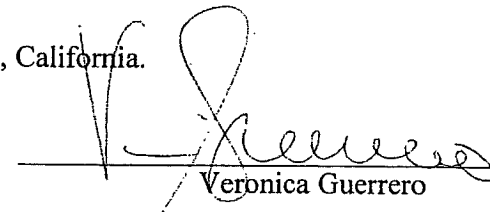
Kevin T. Barnes, Esq.  
Gregg Lander, Esq.  
Law Offices of Kevin T. Barnes  
5670 Wilshire Boulevard, Suite 1460  
Los Angeles, CA 90036-5627

Joseph Antonelli, Esq.  
Janelle Carney, Esq.  
Law Office of Joseph Antonelli  
1000 Lakes Drive, Suite 450  
West Covina, CA 91790

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **April 8, 2008**, at Los Angeles, California.

  
Veronica Guerrero

7

PROTECTIVE ORDER

LA:209512.1

EX. 16  
156

Winston & Strawn LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543

# **EXHIBIT 17**



Kevin T. Barnes, Esq. (#138477)  
 Gregg Lander, Esq. (#194018)  
 LAW OFFICES OF KEVIN T. BARNES  
 5670 Wilshire Boulevard, Suite 1460  
 Los Angeles, CA 90036-5627  
 Tel.: (323) 549-9100 / Fax: (323) 549-0101  
 Email: Barnes@kbarnes.com

Joseph Antonelli, Esq. (#137039)  
 Janelle Carney, Esq. (#201570)  
 LAW OFFICE OF JOSEPH ANTONELLI  
 1000 Lakes Drive, Suite 450  
 West Covina, CA 91790-2918  
 Tel.: (626) 917-6228 / Fax: (626) 917-7686  
 Email: JAntonelli@antonellilaw.com

Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED**

JOSE JIMENEZ, on behalf of himself and all  
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New  
 York corporation; and DOES 1 to 100,  
 inclusive,

Defendants.

Case No.: BC383006  
 Dept.: 45  
 Honorable: Mel Red Recana

**CLASS ACTION**

**STIPULATION TO CONTINUE CASE  
 MANAGEMENT CONFERENCE TO  
 DATE FOR DEFENDANT'S  
 DEMURRER;**

**[PROPOSED] ORDER**

Case Management Conference  
 Date: April 25, 2008  
 Time: 8:30 a.m.

Defendant's Demurrer /  
[Proposed CMC]  
 Date: May 13, 2008  
 Time: 8:30 a.m.

Action Filed: December 28, 2007

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PLEASE BE ADVISED that all parties have discussed the following matters:

There is currently on the Court's calendar a Case Management Conference for April 25, 2008 at 8:30 a.m. in Department 45. The parties, through their counsel, propose to continue this hearing and the briefing thereon because there is also on the Court's calendar Defendant's

- 1 -

**STIPULATION TO CONTINUE CASE MANAGEMENT  
 CONFERENCE TO DATE FOR DEFENDANT'S DEMURRER; ORDER**

KEVIN T. BARNES  
 5670 WILSHIRE  
 BUILDING SUITE 1460  
 LOS ANGELES, CA  
 90036-5614  
 TEL.: (323) 549-9100  
 FAX: (323) 549-0101

**EX. 17**  
**157**

1 noticed Demurrer hearing on May 13, 2008. To that end, the parties stipulate that the 4/25/08  
2 CMC and the 5/13/08 Demurrer both take place on May 13, 2008 at 8:30 a.m.

3 Dated: April 16, 2008

LAW OFFICES OF KEVIN T. BARNES

4  
5 By: 

Kevin T. Barnes, Esq.  
Gregg Lander, Esq.  
Attorneys for Plaintiffs

6  
7 Dated: April 16, 2008

WINSTON & STRAWN LLP

8  
9 By: 

Jessie A. Kohler, Esq.  
Julia Lapis Blakeslee, Esq.  
Attorneys for Defendants

10  
11 -----  
12 **[PROPOSED] ORDER**

13  
14 IT IS SO ORDERED.

15  
16 DATED: \_\_\_\_\_

By: \_\_\_\_\_

Honorable: Mel Red Recana

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 years and not a party to this action. My business address is 5670 Wilshire Boulevard, Suite 1460, Los Angeles, California 90036-5627, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I served the attached document(s) described as:

**STIPULATION TO CONTINUE CASE MANAGEMENT CONFERENCE TO  
DATE FOR DEFENDANT'S DEMURRER; [PROPOSED] ORDER**

on the interested parties in this action, addressed as follows:

Jessie A. Kohler, Esq.  
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Tel.: (213) 615-1700 / Fax: (213) 615-1750  
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West Covina, CA 91790-2918  
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Email: JAntonelli@antonellilaw.com

using the following service method(s):

X **VIA MAIL:** I deposited the document(s) to be served at: **5670 Wilshire Boulevard, Los Angeles, CA**, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on **April 17, 2008**, at Los Angeles, California.

  
Gregg Lander

# **EXHIBIT 18**

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 Email: JAntonelli@antonellilaw.com

Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED**

JOSE JIMENEZ, on behalf of himself and all  
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New  
 York corporation; and DOES 1 to 100,  
 inclusive,

Defendants.

Case No.: BC383006  
 Dept.: 45  
 Honorable: Mel Red Recana

**CLASS ACTION**

Hearing:  
**Date:** May 13, 2008  
**Time:** 8:30 a.m.

**PLAINTIFF'S OPPOSITION TO  
 DEFENDANT'S DEMURRER TO  
 PLAINTIFF'S FIRST AMENDED  
 COMPLAINT**

Action Filed: December 28, 2007

**I.**

**INTRODUCTION AND STATEMENT OF FACTS**

On December 28, 2007, Plaintiff JOSE JIMENEZ, on behalf of himself and all others similarly situated (hereafter, "Plaintiff") filed a Complaint against SEARS, ROEBUCK AND CO. and DOES 1 to 100 (hereafter, "Defendant"). Plaintiff's Complaint alleges causes of action for violation of California Business and Professions Code ("B&PC") §17200, et seq. (also known as the "Unfair Competition Law" ("UCL")) and Declaratory Relief. On March 5, 2008, Plaintiff filed a First Amended Complaint ("FAC"). On April 8, 2008, Defendant filed a Demurrer to the FAC.

1 Defendant's Demurrer contains the following arguments:

2 1) Defendant argues that Plaintiff cannot proceed on his UCL cause of action because "his  
3 claim is predicated on statutory violations which are barred by the statute of limitations." However,  
4 the UCL allows Plaintiff to allege statutory violations as the basis for an independent action for  
5 unlawful business practices.

6 2) Defendant argues that Plaintiff cannot request Declaratory Relief "because he lacks  
7 standing as a former employee" "to seek declaratory relief on behalf of Sears' current  
8 employees." However, Plaintiff may certainly seek to right an ongoing wrong. Further, a general  
9 demurrer to a cause of action for declaratory relief must be overruled as long as an actual  
10 controversy is alleged; here, an actual controversy is pled in the FAC.

11 As such, Defendant's Demurrer is without merit and must be overruled.

## 12 II.

### 13 THE OPERATIVE COMPLAINT MUST BE LIBERALLY CONSTRUED

14 Pursuant to California Code of Civil Procedure ("CCP") §425.10(a)(1), a complaint shall  
15 contain "A statement of the facts constituting the cause of action, in ordinary and concise  
16 language." The complaint's allegations "must be liberally construed, with a view to substantial  
17 justice between the parties." CCP §452. "Neither trial nor appellate courts should be distracted  
18 from the main issue, or rather the only issue involved in a demurrer hearing, namely, whether the  
19 complaint, as it stands, unconnected with extraneous matters, states a cause of action." Griffith v.  
20 Dept. of Public Works (1956) 141 Cal.App.2d 376.

21 A demurrer simply tests, as a matter of law, if the pleading states facts sufficient to  
22 constitute a cause of action. La Jolla Village Homeowner's Ass'n. v. Superior Court (1989) 212  
23 Cal.App.3d 1131, 1141.

24 A complaint challenged by a general demurrer must be also liberally construed, and the  
25 demurrer must be overruled if any cause of action is stated. Amacorp Indus. Leasing Co. v.  
26 Robert C. Young Assoc., Inc. (1965) 237 Cal.App.2d 724. Further, a demurrer admits all  
27 material and issuable facts pleaded, and the trial court is required to treat all of the plaintiff's  
28

1 allegations as being proved. Trewin v. State of California (1984) 150 Cal.App.3d 975, 981;  
 2 Sullivan v. Los Angeles County (1974) 12 Cal.3d 710, 714-715, n. 3.

3 Further, this Court may not consider evidence outside of the pleadings, nor interpret the  
 4 matters before it when such interpretations involve resolving factual questions that cannot be  
 5 answered by viewing the pleadings. Trewin, supra, 150 Cal.App.3d at 980. Here, Defendant  
 6 provides a “speaking demurrer” in that it fails to stick to just the facts pleaded in the FAC.

7 In fact, Defendant’s Demurrer is replete with “facts” outside of the pleadings, which are  
 8 impermissible and cannot be considered. For example, in Defendant’s “Introduction,” Defendant  
 9 claims that Plaintiff “has no present interest in Sears’ wage and hour policies or practices.” Not  
 10 only is this simply not true, but it steps outside of the four walls of the FAC to attempt to  
 11 improperly influence this Court. The court may not consider extrinsic evidence argued in  
 12 Defendant’s demurrer. Ion Equip. Corp. v. Nelson (1980) 110 Cal.App.3d 868, 881.

13 Plaintiff has sufficiently pled all causes of action. Accordingly, this Court is required to  
 14 liberally construe the operative complaint, treat all of the material allegations as being proved  
 15 and overrule the Demurrer.

### 16 III.

#### 17 PLAINTIFF’S CAUSES OF ACTION SURVIVE DEMURRER

##### 18 A. Plaintiff’s First Cause of Action For Unfair Competition States Facts Sufficient to 19 Constitute a Cause of Action

20 Defendant argues that Plaintiff’s first cause of action for violation of the UCL is barred  
 21 because “it is entirely duplicative of statutory wage claims on which the statute of limitations has  
 22 expired.” However, B&PC §17208 provides that “[a]ny action to enforce any cause of action  
 23 under this chapter shall be commenced within four years after the cause of action accrued.”  
 24 Further, any business act or practice that violates the Labor Code through failure to pay wages is,  
 25 by definition, an unfair business practice. Cortez v. Purolator Air Filtration Products Co. (2000)  
 26 23 Cal.4<sup>th</sup> 163, 178. “It follows that an action to recover wages that might be barred if brought  
 27 pursuant to Labor Code §1194 still may be pursued as a UCL action seeking restitution pursuant  
 28 to [B&PC] §17203 if the failure to pay constitutes a business practice.” Id. at 178-179.

Defendant's Demurrer repeatedly cites to In re Vaccine Cases (2005) 134 Cal.App.4<sup>th</sup> 43. There, the plaintiffs alleged that the defendant violated "Proposition 65" and based on this alleged statutory violation, the plaintiffs also alleged a violation of the UCL. The trial court sustained a demurrer to the complaint without leave to amend. The Court of Appeal affirmed the dismissal for the following reasons:

1) The dismissal of the first cause of action for violation of Proposition 65 was affirmed because the plaintiffs did not plead a necessary element of Proposition 65 and the plaintiffs had not complied with Proposition 65's pre-suit notice requirements.

2) The dismissal of the second cause of action for UCL violations because no violation of Proposition 65 occurred with regard to one group of defendants and the plaintiffs did not comply with the pre-suit notice requirements with regard to the other group of defendants. Id. at 444-445.

As such, In re Vaccine Cases stands for the proposition that if the underlying statute itself specifically requires pre-suit notice, then such notice must too be given before a UCL claim may be filed. However, In re Vaccine Cases does not stand for the proposition that Plaintiff here is barred from bringing a UCL claim even if the statute of limitations for the underlying statute has passed. In fact, the opposite is true. A plaintiff can bring a UCL cause of action under the four-year statute of limitations of the UCL, even though the predicate statutory violation under the Labor Code had a shorter statute of limitations. Id., citing Cortez, supra, 23 Cal.4<sup>th</sup> 163.

It is true that a plaintiff cannot use the UCL to plead around an absolute bar to relief. In re Vaccine Cases, supra, 134 Cal.App.4<sup>th</sup> at 458. However, there, the lack of pre-suit notice created the bar to relief. Here, no such bar exists, including and especially any statute of limitations issues.

Defendant's Demurrer brazenly makes the following assertions:

In re Vaccine Cases expressly rejected the proposition that the plaintiffs' claim in that case could be construed to seek redress for "unfair" practices because the complaint focused exclusively on an alleged statutory violation. Id. at 457.

and

The "unfair" prong of Section 17200 may be satisfied only by separate allegations of different conduct that is not also alleged to violate a statute. (See Defendant's Demurrer, p. 10, lines 10-16).



1 However, a review of page 457 of In re Vaccine Cases (and the entire case for that  
2 matter) does not uncover any such holding, and both of Defendant's aforementioned statements  
3 are simply neither true or accurate.

4 In truth, by proscribing any unlawful business practice, the UCL borrows violations of  
5 other laws and treats them as unlawful practices that the UCL makes independently actionable.  
6 Schnall v. Hertz Corp. (2000) 78 Cal.App.4<sup>th</sup> 1144, 1153. Here, Defendant concedes that  
7 Plaintiff's alleged unlawful practices are independently actionable under the UCL. (See  
8 Defendant's Demurrer, p. 4, fn. 1, citing Farmers Ins. Exchange v. Superior Court (1992) 2  
9 Cal.4<sup>th</sup> 377, 383). As such, there can be no good faith argument that Plaintiff's first cause of  
10 action for unfair competition states facts sufficient to constitute a cause of action, and as such,  
11 Defendant's Demurrer fails as to this cause of action.

12 **B. Plaintiff's Second Cause of Action For Declaratory Relief States Facts Sufficient to**  
13 **Constitute a Cause of Action**

14 A general demurrer to a cause of action for declaratory relief must be overruled as long as  
15 an actual controversy is alleged; the pleader need not establish entitlement to a favorable  
16 judgment. Ludgate Ins. Co. v. Lockheed Martin Corp. (2000) 82 CA4th 592, 606. A "demurrer is  
17 a procedurally inappropriate method for disposing of a complaint for declaratory relief."  
18 Lockheed Corp. v. Continental Ins. Co. (2005) 134 CA4th 187, 221.

19 Here, the FAC alleges at ¶92:

20 92. An actual controversy exists in that Defendants assert they have the legal  
21 right to perform the acts as described herein.

22 Therefore, an actual controversy has been pled.

23 Defendant next argues that the FAC fails to please a present or probable future  
24 controversy relating to the legal rights and duties of the parties. This is also an untrue statement,  
25 as the FAC alleges at ¶91:

26 91. Defendants continue to this day to engage in some or all of the unlawful  
27 and unfair conduct as described herein.

28 ///

1 In Cortez, *supra*, 23 Cal.4<sup>th</sup> 163, an employee sued her employer “on behalf of herself  
 2 and the general public” under the Labor Code and the UCL, seeking restitution and other relief in  
 3 connection with her employer’s failure to pay overtime wages. After a nonjury trial, the trial  
 4 court entered judgment in favor of the plaintiff on the Labor Code claims and awarded plaintiff  
 5 overtime pay, interest, and penalties sought for her own behalf, but found no threat of repeated  
 6 violation and could not order restitution on behalf of absent employees. Plaintiff appealed and  
 7 the California Supreme Court ultimately held that the defendant may be compelled to restore  
 8 unpaid wages to its current and former employees. *Id.* at 168. There, as here, the defendant  
 9 argued that the plaintiff lacked standing to seek restitution on behalf of the other employees.  
 10 Therefore, Plaintiff has set forth the present and probable future controversy.

11 Further, B&PC §17203 specifically authorizes the Court to fashion remedies to prevent,  
 12 deter and compensate for unfair business practices. It authorizes orders that are necessary to  
 13 prevent practices that constitute unfair competition and to make order or judgments as may be  
 14 necessary to restore to persons in interest any money or property acquired by unfair competition.  
 15 Here, both former and current employees were and are the subject of the alleged unfair  
 16 competition and as such Plaintiff has standing to pursue declaratory relief.

17 Finally, as previously stated, Defendant’s statements that Plaintiff has no “real interest in  
 18 Sears’ current wage and hour policies and practices” is both untrue and an impermissible  
 19 speaking Demurrer. As such, the Demurrer to this cause of action must be overruled.

#### 20 IV.

#### 21 IF DEFENDANTS’ DEMURRER HAS ANY MERIT, 22 PLAINTIFF SHOULD BE GRANTED LEAVE TO AMEND

23 Generally it is an abuse of discretion to sustain a demurrer without leave to amend if  
 24 there is any reasonable possibility of a cure by amendment. Goodman v. Kennedy (1976) 18  
 25 Cal.3d 335. Leave to amend should be granted if there it is reasonably possible for the plaintiff to  
 26 state a good cause of action. Virginia G. v. ABC Unified School. Dist. (1993) 15 Cal.App.4<sup>th</sup>  
 27 1848. Therefore, if the Court sustains Defendant’s Demurrer, or any part of it, Plaintiff  
 28 respectfully requests the opportunity to further amend the FAC.

V.

CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully request that this Court overrule Defendant's Demurrer in its entirety, and Order Defendants to file and serve an Answer the FAC within twenty (20) days of this hearing.

Dated: April 30, 2008

LAW OFFICES OF KEVIN T. BARNES

By: 

Kevin T. Barnes, Esq.  
Gregg Lander, Esq.  
Attorneys for Plaintiffs

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am over the age of 18 years and not a party to this action. My business address is 5670 Wilshire Boulevard, Suite 1460, Los Angeles, California 90036-5627, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I served the attached document(s) described as:

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S DEMURRER TO  
PLAINTIFF'S FIRST AMENDED COMPLAINT**

on the interested parties in this action, addressed as follows:

Jessie A. Kohler, Esq.  
WINSTON & STRAWN LLP  
333 South Grand Avenue, 38th Floor  
Los Angeles, CA 90071  
Tel.: (213) 615-1700 / Fax: (213) 615-1750  
Email: HShen@winston.com

Joseph Antonelli, Esq.  
Janelle Carney, Esq.  
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Email: JAntonelli@antonellilaw.com

using the following service method(s):

  X   **VIA EXPRESS MAIL:** I deposited the document(s) to be served in a box or other facility regularly maintained by the express service carrier, or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in a sealed envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on April 30, 2008, at Los Angeles, California.

  
Gregg Lander


# **EXHIBIT 19**

Winston & Strawn LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543

JESSIE A. KOHLER (SBN 179363)  
JULIA LAPIS BLAKESLEE (SBN 199365)  
AUDREY SHEN CHUI (SBN 254510)  
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**UNFORMED COPY**  
**OF ORIGINAL FILED**  
Los Angeles Superior Court

MAY 06 2008

John A. Clarke, Executive Officer/Clerk  
By  Deputy  
GLORIETTA ROBINSON

Attorneys for Defendant  
SEARS, ROEBUCK AND CO.,  
a New York corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

JOSE JIMENEZ, on behalf of himself and all  
others similarly situated,

Plaintiffs,

vs.

SEARS, ROEBUCK AND CO., a New York  
corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. BC 383006

Assigned to the Honorable Mel Red Recana

DEFENDANT'S REPLY IN SUPPORT OF  
DEMURRER TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT

Complaint Filed: December 28, 2007

Date: May 13, 2008

Time: 8:30 a.m.

Dept. 45

**COPY**

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In his Opposition to the Demurrer of Defendant Sears, Roebuck and Co. ("Sears"), Plaintiff Jose Jimenez ("Plaintiff") wholly fails to address the fundamental deficiencies in the First Amended Complaint ("FAC") that cannot be cured by amendment.

Plaintiff's wage and hour claims are barred by a three-year statute of limitations, which expired nearly nine months before he filed the Complaint. Plaintiff may not attempt to plead around this absolute bar to relief by relying on the four-year statute of limitation that applies to unfair business practices under California Business and Professions Code § 17200 *et seq.* ("UCL").

Moreover, Plaintiff fails to address his lack of standing to bring a cause of action for declaratory relief on behalf of current employees.

Plaintiff's First and Second Causes of Action fail to state a claim, and the admissions that Plaintiff makes in the FAC make clear that he cannot possibly plead additional facts to establish standing or to meet the statute of limitations. For these and other reasons, discussed below, the Court should grant Sears' demurrer.

**II. PLAINTIFF'S FIRST CAUSE OF ACTION FOR UNFAIR COMPETITION IS BARRED BECAUSE THE STATUTE OF LIMITATION FOR THE UNDERLYING STATUTORY CLAIM ALREADY EXPIRED.**

Plaintiff obscures the proposition from *In Re Vaccine Cases* that where the complaint fails to state facts sufficient to support statutory violations underlying a UCL claim, the UCL claim must also fail. The plaintiffs in *In re Vaccine Cases* alleged that defendant vaccine manufacturers violated the Safe Drinking and Water Toxic Enforcement of 1986 ("Proposition 65"). 134 Cal. App. 4th 348 (2005). The Court of Appeal upheld the trial court's ruling sustaining the defendants' demurrer because no statutory violation supported the UCL claim where plaintiff failed to satisfy the requirements of Proposition 65 by failing to provide timely notice of the lawsuit. *Id.* Plaintiff argues that "*In re Vaccine Cases* stands for the proposition that if the underlying statute itself specifically requires pre-suit notice, then such notice must too be given before a UCL claim may be filed." (Plaintiff's Opposition, p. 4, lines 12-14.) But Plaintiff's narrow reading of *In re Vaccine*

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1 Cases does not address the proposition that a plaintiff is barred from relief under Proposition 65  
2 where he fails to comply with pre-suit notice requirements *because he has not satisfied the*  
3 *requirements under that statute. Id.* at 458. That is, plaintiffs must effectively allege a violation of  
4 the underlying statute on which a UCL claim is based on.

5 Indeed, Plaintiff concedes that he cannot use the UCL to plead around an absolute bar to  
6 relief. (Plaintiff's Opposition, p. 4, line 19.) But Plaintiff's unfair competition claim does just that.  
7 Plaintiff did not file the Complaint until December 28, 2007 – nearly nine months after the three-  
8 year statute of limitations on the alleged Labor Code violations expired.<sup>1</sup> Thus, the alleged  
9 violations of the Labor Code underlying Plaintiff's UCL claim are barred by the statute of  
10 limitations.

11 Plaintiff does not dispute that actions for violations of the Labor Code (on which his UCL  
12 cause of action is based) are governed by a three-year statute of limitations. Although the decision  
13 in *Cortez v. Purolator Air Filtration*, 23 Cal. 4th 163 (2000), confirmed that a claim for back wages  
14 under the UCL may be subject to a four year statute of limitations, the Supreme Court did *not*  
15 consider the question of whether a UCL claims is barred when the statute of limitations on the  
16 underlying statutory claims has expired. Indeed, in *Cortez*, the plaintiff filed her complaint within  
17 the Labor Code's three-year statute of limitations. *Cortez v. Purolator Air Filtration*, 64 Cal. App.  
18 4th 882, 888 (1998).

19 The fundamental policy reasons underlying statutes of limitations further support Sears'  
20 position. Statutes of limitations are designed to protect defendants from defending against stale  
21 claims and to ensure that plaintiffs diligently pursue their claims. *Jolly v. Eli Lilly & Co.*, 44 Cal. 3d  
22 1103, 1111-1112 (1988). It is unjust not to put an adversary on notice of a claim within the period of  
23 limitation. *Duty v. Abex Corp.*, 214 Cal. App. 3d 742, 749 (1989). Here, Plaintiff failed to pursue  
24 his wage and hour claims diligently and provide notice to Sears of his claim. After allowing the  
25

26 <sup>1</sup> A claim under Labor Code Section 226 is subject to a one year statute of limitations, and claims  
27 under Labor Code Sections 218, 226.7, 510, 512, 1194 and 1198 are subject to a three year statute of  
28 limitations. Since Plaintiff's last day of employment with Sears was April 9, 2004 (FAC, ¶ 9), his  
right to bring an action under Labor Code Section 226 expired on April 9, 2005, and his right to  
bring an action under Labor Code Sections 218, 226.7, 510, 512, 1194 and 1198 expired on April 9,  
2007.



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1 applicable three-year statute of limitation to expire, Plaintiff now relies on the UCL's four-year  
2 statute of limitation to moot, in essence, all statutes of limitations and to attempt to revive otherwise  
3 barred claims.

4 Here, Plaintiff allowed the three-year statute of limitation on his underlying Labor Code  
5 allegations to expire, and expiration of the statute of limitation operates as a complete bar to relief.  
6 Thus, Plaintiff cannot rely on the UCL to plead around the statute of limitations bar. Nor can  
7 Plaintiff amend the FAC to allege facts that satisfy the statute of limitations.

8 Accordingly, Plaintiff cannot maintain a cause of action for violation of the UCL. The Court  
9 should sustain Sears' demurrer as to the First Cause of Action.

10 **III. PLAINTIFF HAS NOT, AND CANNOT, SET FORTH HIS SECOND CAUSE OF**  
11 **ACTION FOR DECLARATORY RELIEF BECAUSE HE LACKS STANDING AND**  
12 **FAILS TO ALLEGE THE NECESSARY ELEMENTS.**

13 Plaintiff, who has not been employed by Sears since early 2004, lacks standing to seek  
14 declaratory relief on behalf of current Sears employees. (FAC, ¶ 9.) Plaintiff wholly fails to address  
15 his lack of standing to represent current Sears employees in his opposition papers.

16 Plaintiff argues that the FAC alleges at ¶ 91 that "Defendants continue to this day to engage  
17 in some or all of the unlawful and unfair conduct as described herein." Even if this allegation were  
18 true, Plaintiff fails to address how Sears' current wage and hour policies or practices create a present  
19 or probable future controversy involving himself.

20 Plaintiff cites to *Cortez, supra*, 23 Cal. 4th 163, to argue that he has set forth a present and  
21 probable future controversy. In *Cortez*, an employee sued her employer under the Labor Code and  
22 the UCL and prevailed in seeking restitution for unpaid wages. Notably, the plaintiff was a *former*  
23 employee and did not seek declaratory relief. *Id.* at 169-70. Plaintiff provides no explanation as to  
24 how a former employee prevailing on a UCL claim and receiving restitution for unpaid wages in  
25 *Cortez* allows a claim for declaratory relief in this case.

26 Furthermore, "[d]eclaratory procedure operates prospectively, and not merely for the redress  
27 of past wrongs. . . in short, the remedy is to be used in the interests of preventive justice, to declare  
28 rights rather than execute them." *Babb v. Superior Court*, 3 Cal. 3d 841, 848 (1971). The FAC

1 concedes that Plaintiff is a former employee of Sears. (FAC, ¶ 9.) Thus, based on the face of the  
2 FAC, to the extent that Plaintiff has a claim against Sears, it is only for alleged violations that took  
3 place in the past. Plaintiff therefore cannot seek declaratory relief.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Sears respectfully requests that this Court sustain its demurrer  
6 without leave to amend.

7  
8 Dated: May 6, 2008

WINSTON & STRAWN LLP

9  
10 By: \_\_\_\_\_

Eric E. Suits  
Attorneys for Defendant  
SEARS ROEBUCK AND CO.

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Winston & Strawn LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543

1 ROOF OF SERVICE

2 STATE OF CALIFORNIA )

3 COUNTY OF LOS ANGELES ) ss

4 I am a resident of the State of California, over the age of eighteen years, and not a party to  
5 the within action. My business address is Winston & Strawn LLP, 333 South Grand Avenue, Los  
6 Angeles, CA 90071-1543. On May 6, 2008, I served the within document(s):

7 **DEFENDANT'S REPLY IN SUPPORT OF DEMURRER TO PLAINTIFF'S FIRST**  
8 **AMENDED COMPLAINT**

- 9 ☐ by placing the document(s) listed above in a sealed envelope with postage thereon  
10 fully prepaid, in the United States mail at Los Angeles, California, addressed as set  
11 forth below.
- 12 ☐ On May 6, 2008, I sent such document(s) from facsimile machine 213-615-1750. I  
13 certify that said transmission was completed and that all pages were received and that  
14 a report was generated by facsimile machine 213-615-1750 which confirms said  
15 transmission and receipt.
- 16 ☐ by causing to be personally delivered the document(s) listed above to the person(s) at  
17 the address(es) set forth below.
- 18 ☒ by causing the document(s) listed above to be delivered via overnight delivery  
19 (Federal Express) to the person(s) at the address(es) set forth below.

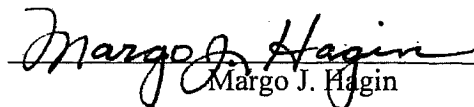
20 Kevin T. Barnes, Esq.  
21 Gregg Lander, Esq.  
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25 Joseph Antonelli, Esq.  
26 Janelle Carney, Esq.  
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28 1000 Lakes Drive, Suite 450  
West Covina, CA 91790

29 I am readily familiar with the firm's practice of collection and processing correspondence for  
30 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day  
31 with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of  
32 the party served, service is presumed invalid if postal cancellation date or postage meter date is more  
33 than one day after the date of deposit for mailing an affidavit.

34 I declare under penalty of perjury under the laws of the State of California that the above is  
35 true and correct.

36 Executed on May 6, 2008, at Los Angeles, California.

37   
38 Margo J. Hagin

Winston & Strawn LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543

# **EXHIBIT 20**

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Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED**

JOSE JIMENEZ, on behalf of himself and all  
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New  
 York corporation; and DOES 1 to 100,  
 inclusive,

Defendants.

Case No.: BC383006  
 Dept.: 45  
 Honorable: Mel Red Recana

**Hearing:**  
**Date: June 6, 2008**  
**Time: 8:30 a.m.**

**CLASS ACTION**

**PLAINTIFF'S NOTICE OF MOTION  
 AND MOTION TO COMPEL  
 RESPONSE TO PLAINTIFF'S  
 SPECIAL INTERROGATORIES, SET  
 NO. ONE (1); INTERROGATORY NO.  
 2; DECLARATION OF GREGG  
 LANDER IN SUPPORT THEREOF;  
 SEPARATE STATEMENT IN  
 SUPPORT THEREOF; [PROPOSED]  
 ORDER**

Action Filed: December 28, 2007

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On June 6, 2008 at 8:30 a.m. or as soon thereafter as the matter may be heard, in  
 Department 45 of the above-titled Court, the Honorable Mel Red Recana presiding, Plaintiff Jose  
 Jimenez, an individual on behalf of himself and all others similarly situated and the general public,

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- 1 -

**PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL RESPONSE TO PLAINTIFF'S SPECIAL  
 INTERROGATORIES, SET NO. ONE (1); INTERROGATORY NO. 2; DECLARATION OF GREGG LANDER  
 IN SUPPORT THEREOF; SEPARATE STATEMENT IN SUPPORT THEREOF; [PROPOSED] ORDER**

1 will move the Court for an Order to Compel Response to Plaintiffs' Special Interrogatories, Set  
2 No. One (1).

3 This Motion is made on the grounds that:

- 4 1) the discovery provisions are to be liberally construed in favor of disclosure;
- 5 2) Defendants have offered no viable legal objection or authority to withhold the  
6 requested information;
- 7 3) the requested information is necessary and relevant to class certification issues of  
8 commonality, typicality, adequacy and numerosity;
- 9 4) the requested information is necessary in order for Plaintiffs to conduct an  
10 adequate precertification and/or pretrial investigation;
- 11 5) the requested information is essential so Plaintiffs can communicate and conduct  
12 discovery with the putative class members;
- 13 6) the requested information is necessary for Plaintiffs to carry out fiduciary and  
14 ethical duties owed to the absent class members;
- 15 7) Defendants may not hide behind the assertion of privacy rights; and
- 16 8) Defendants can establish no risk of prejudice by such a disclosure.

17 Dated: April 21, 2008

LAW OFFICES OF KEVIN T. BARNES

18  
19 By: 

20 Kevin T. Barnes, Esq.  
21 Gregg Lander, Esq.  
22 Attorneys for Plaintiffs  
23  
24  
25  
26  
27  
28

- 2 -

PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL RESPONSE TO PLAINTIFF'S SPECIAL  
INTERROGATORIES, SET NO. ONE (1); INTERROGATORY NO. 2; DECLARATION OF GREGG LANDER  
IN SUPPORT THEREOF; SEPARATE STATEMENT IN SUPPORT THEREOF; [PROPOSED] ORDER

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Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED**

JOSE JIMENEZ, on behalf of himself and all  
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New  
 York corporation; and DOES 1 to 100,  
 inclusive,

Defendants.

Case No.: BC383006

Dept.: 45

Honorable: Mel Red Recana

**Hearing:**

**Date: June 6, 2008**

**Time: 8:30 a.m.**

**CLASS ACTION**

**PLAINTIFFS' MEMORANDUM OF  
 POINTS AND AUTHORITIES IN  
 SUPPORT OF PLAINTIFF'S MOTION  
 TO COMPEL RESPONSE TO  
 PLAINTIFFS' SPECIAL  
 INTERROGATORIES, SET NO. ONE,  
 INTERROGATORY NO. 2**

[PLAINTIFFS' SEPARATE  
 STATEMENT IN SUPPORT OF  
 PLAINTIFFS' MOTION TO COMPEL  
 RESPONSE FILED CONCURRENTLY  
 HEREWITH]

Action Filed: December 28, 2007

///

///

///

///

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**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO  
 COMPEL RESPONSE TO PLAINTIFFS' SPECIAL INTERROGATORIES, SET NO. ONE, INTERROGATORY NO. 2**

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

On December 28, 2007, Plaintiff JOSE JIMENEZ ("Plaintiff") filed a proposed Class Action against Defendant Sears, Roebuck and Co. and DOES 1 to 100 ("Defendants") alleging violations of California labor laws, including the California Labor Code ("Labor Code").

On or about January 18, 2008, Plaintiffs propounded Special Interrogatories ("SROG"), Set No. One (1) upon Defendants by mail, consisting of two (2) discovery requests. Plaintiffs' SROG No. 2 states: "IDENTIFY each putative CLASS MEMBER." SROG No. 2 requests the name, address and telephone number of Defendants' California-based "Assistant Manager" positions in Defendants' Automotive Center Division employed during the relevant time period. (A true and correct copy of Plaintiffs' discovery is attached hereto the Declaration of Gregg Lander ("GL Decl.") as Exhibit "1").

On or about February 22, 2008, Defendants responded to SROG No. 2 as follows:

Defendant objects to the Special Interrogatory to the extent it is vague and ambiguous as to the term "putative class members," including to the extent that Plaintiff has defined the putative class as including people in "job positions with substantially similar titles and duties in that Division." Defendant objects to the Special Interrogatory to the extent it is overbroad, oppressive, burdensome, and harassing. Defendant objects to the Special Interrogatory to the extent it requests information protected by privacy rights and conflicts with Defendant's legal obligation to maintain the confidentiality of its employee's personnel data. (A true and correct copy of Defendants' response is attached to GL Decl. as Exhibit "2").

Deeming these to be improper objections, on or about March 3, 2008, Plaintiffs initiated the meet and confer process in an attempt to informally resolve this discovery dispute. Essentially this meet and confer process can be summed up as follows:

- 3/3/08 - Plaintiffs send Meet & Confer letter re: SROG1;
- 3/14/08 - Defendants respond regarding putative class members' privacy rights;
- 3/27/08 - Plaintiffs respond by agreeing to enter into a protective order;
- 4/2/08 - Defendants send protective order and now also want disclosure consent;
- 4/3/08 - Plaintiffs compromise by agreeing to an "opt-out" privacy notice;
- 4/16/08 - Defendants advise they will only agree to an "opt-in" notice;

- 1 -

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL INTERROGATORIES, SET NO. ONE, INTERROGATORY NO. 2

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- 1 • 4/16/08 - As Plaintiffs are already compromising, Plaintiffs advise they will only agree
- 2 to an "opt-out" notice pursuant to Pioneer v. Superior Court (2005) 128 Cal.App.4th
- 3 246 and Belaire-West v. Superior Court (2007) 149 Cal.App.4th 554;
- 4 • 4/17/08 - Plaintiffs again request Defendants' decision, with no response.
- 5 (A true and correct copy of all written correspondence memorializing the meet and
- 6 confer process herein is attached to GL Decl. as Exhibit "3").

7 Plaintiffs' deadline to file a Motion to Compel regarding this discovery was April 21, 2008. As of  
 8 that date, which was also the date of filing of the instant Motion, Defendants have failed to provide  
 9 the requested responses to Plaintiffs' discovery. The parties have met and conferred in good faith  
 10 and are unable to informally resolve this dispute. Therefore, Plaintiffs see no choice but to move to  
 11 compel the requested information.

## 12 II.

### 13 PLAINTIFFS' MOTION TO COMPEL IS 14 APPROPRIATE BECAUSE THE SCOPE OF DISCOVERY 15 IS DIRECTLY RELEVANT TO THE SUBJECT MATTER INVOLVED

16 If discovery responses are incomplete, inadequate, evasive, or the **objections are**  
 17 **meritless or too general**, a plaintiff may bring a motion to compel further responses. Deyo v.  
 18 Kilbourne (1978) 84 Cal.App.3d 771.

19 For the foregoing reasons, Plaintiffs believe they are entitled to the names, addresses, and  
 20 telephone numbers of all of Defendants' California-based employees who are and were similarly  
 21 situated to Plaintiffs herein during the relevant time period.

22 **California courts have reiterated that discovery provisions are to be liberally**  
 23 **construed in favor of disclosure.** In interpreting the former Discovery Act of 1957, the  
 24 Supreme Court stated in the still important seminal case of Greyhound Corp. v. Superior Court  
 25 (1961) 56 Cal.2d 355, 378 that disclosure in discovery exists "as a matter of right unless  
 26 statutory or public policy considerations clearly prohibit it." This concept of liberal discovery is  
 27 codified in the Discovery Act of 1986. Any information that "might reasonably assist a party in  
 28 evaluating the case, preparing for trial, or facilitating settlement" falls within the definition of

- 2 -

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO  
 COMPEL RESPONSE TO PLAINTIFFS' SPECIAL INTERROGATORIES, SET NO. ONE, INTERROGATORY NO. 2

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1 permissible discovery. Lipton v. Superior Court (1996) 48 Cal.App.4th 1599, 1611. Discovery  
 2 rules are applied liberally in favor of discovery, and “(contrary to popular belief) **fishing**  
 3 **expeditions are permissible in some cases.**” Gonzales v. Superior Court (1995) 33 Cal.App.4th  
 4 1539, 1546 (emphasis added).

5 Further, all doubts about discovery are resolved in favor of disclosure. Glenfed Dev.  
 6 Corp. v. Superior Court (1997) 53 Cal.App.4th 1113, 1119. By making both the scope of  
 7 discovery and the court’s discretion to limit it very broad, the Legislature has assured that  
 8 California trial courts will continue the common law tradition of flexibility in applying legal  
 9 concepts to specific discovery disputes and reaching reasonable conclusions.

10 Plaintiffs’ discovery seeks information directly relevant to the disclosure of facts  
 11 supporting key contentions. (See CCP §382) Defendants’ apparent goal is to deny Plaintiffs the  
 12 ability to conduct discovery into Defendants’ defenses in this case and thus unfairly prejudice  
 13 Plaintiffs at the time of Plaintiffs’ Motion for Class Certification. Plaintiffs are entitled to  
 14 straightforward, non-evasive and complete discovery responses.

15 Here, Plaintiffs are simply asking for the identity of putative class members, who  
 16 are **key fact witnesses** both for the current purposes of class certification, as well as for the trial  
 17 herein. The putative class members possess unique and important knowledge of facts concerning  
 18 the duties, hours, policies, procedures, and tasks, among other things, which are at the heart of  
 19 this case. The names, addresses and telephone numbers of the class members are reasonably  
 20 calculated to lead to the discovery of admissible evidence. Without this information, Plaintiffs  
 21 are prevented from ascertaining information essential to this case. Further, Defendants have  
 22 unfettered access to this same information, which fatally prejudices Plaintiffs’ ability to conduct  
 23 the necessary discovery.

24 The Court of Appeal, Second District, considered and evaluated the purpose of the  
 25 statutory authorization for the discovery of the identity and location of witnesses in City of Long  
 26 Beach v. Superior Court (1976) 64 Cal.App.3d 65, when faced with the issue of whether the  
 27 names and locations of witnesses are discoverable or are protected by the attorney work product  
 28 privilege. The Court held:

- 3 -

PLAINTIFFS’ MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF’S MOTION TO  
 COMPEL RESPONSE TO PLAINTIFFS’ SPECIAL INTERROGATORIES, SET NO. ONE, INTERROGATORY NO. 2

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1 The legitimate interests and purposes of discovery are generally amply protected  
 2 by the requirement that an adverse party is entitled to the identity and location of  
 3 all persons with knowledge of relevant facts...Its basis is that persons who have  
 4 relevant knowledge are not to be considered the witnesses of any particular party  
 5 to the litigation. Ensuring the availability to all parties of the right to contact  
 6 and to take depositions of these witnesses provides adequate safeguards against  
 7 surprise or false testimony. Id. at 76-77 (emphasis added).

8 Defendants' attempt to hide the location of these individuals is inherently abhorrent to  
 9 California's discovery rules. By withholding the identities of the most important witnesses,  
 10 Defendants critically obstruct Plaintiffs' access to these persons. Such unilateral control over the  
 11 discovery process by a party to the litigation is not what the Legislature intended. Defendants  
 12 are, in essence, securing these witnesses as their own, thereby entitling Defendants to control  
 13 what information is brought out in discovery.

14 In fact, from past experience with class certification, this Court is certainly aware that  
 15 defendants often rely on declarations from the putative class members (usually current  
 16 employees) in order to oppose class certification. Therefore, the Court cannot allow Defendants  
 17 the opportunity to freely use this information while simultaneously seeking to bar Plaintiffs'  
 18 access to the same.

19 Plaintiffs are entitled to this information for all the reasons expressed above as well as the  
 20 facts that this information: 1) is relevant to class certification issues of commonality, typicality  
 21 and numerosity; 2) is necessary for Plaintiffs to conduct an adequate precertification and/or  
 22 pretrial investigation; 3) is essential for Plaintiffs to communicate with the putative class  
 23 members; 4) is necessary for Plaintiffs to carry out fiduciary and ethical duties owed to the  
 24 absent class members; and 5) creates no risk of prejudice to Defendants by such disclosure.

25 Further, CCP §2017.010 provides in pertinent part that "any party may obtain discovery  
 26 regarding any matter, not privileged, that is relevant to the subject matter involved in the pending  
 27 action or to the determination of any motion made in the action, if the matter either is itself  
 28 admissible in evidence or appears reasonably calculated to lead to the discovery of admissible  
 evidence." As previously stated, here it is fundamental that Defendants are required to disclose  
 the identity and location of persons having knowledge of particular relevant facts. Deyo v.  
Kilbourne, supra. Presently, Defendants have sole access to the putative class members.

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- 4 -

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO  
 COMPEL RESPONSE TO PLAINTIFFS' SPECIAL INTERROGATORIES, SET NO. ONE, INTERROGATORY NO. 2

1 Plaintiffs are seeking the identity of these individuals in order to further Plaintiffs' investigative  
2 efforts in preparation for class certification.

3 As the court in Atari, Inc. v. Superior Court (1985) 166 Cal.App.3d 867 ("Atari") stated:

4 "A determination 'whether the common questions are sufficiently pervasive to permit  
5 adjudication in a class action rather than in a multiplicity of suits' cannot realistically be  
6 made until the parties have had a chance to conduct reasonable investigation." Id. at 870.  
Likewise, in Valley Bank of Nevada v. Superior Court (1975) 15 Cal.3d 652, the

7 plaintiffs sought customer information that the defendant claimed was confidential. The  
8 defendant objected on the grounds of relevancy and privacy. The California Supreme Court  
9 rejected that defendant's arguments, holding that the discovery of the names was relevant to the  
10 subject matter of the action. The court approved a communication to the customers, i.e., the ones  
11 who would have standing to assert a privacy objection, affording them with an opportunity to  
12 assert their interests by objecting to disclosure.

13 **Plaintiffs herein will suffer an immeasurable prejudice without the ability to**  
14 **conduct reasonable investigation in anticipation of class certification.** Plaintiffs' ability to  
15 communicate with absent class members will be effectively silenced, while Defendants will be  
16 afforded total access to the same group. All counsel are permitted fair precertification  
17 communication pursuant to Gulf Oil Co. v. Bernard (1981) 452 U.S. 89 and its progeny.  
18 Consistent with fundamental fairness, in the absence of abuse, neither party should be precluded  
19 from investigating and preparing its case for certification. Atari, supra, at 873. The Atari Court  
20 approved free, open, and fair communication between any party to the litigation and the absent  
21 class members.

22 By denying Plaintiffs access to the classes, Defendants seek to trump the reasoning of  
23 Atari in that the Court will have imposed upon Plaintiffs a practical gag. Tilting the playing field  
24 (in Defendants' favor) in such a manner would be fundamentally unfair.

25 A class representative has a right, if not an outright duty, to contact all absent class  
26 members in the course of prosecuting a class action "...to discover certain information in the  
27 possession of absent class members, or to ascertain the whereabouts of other class members, in  
28 order to show the impracticability of joinder or to refine the class to ensure certification. Absent

- 5 -

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION TO  
COMPEL RESPONSE TO PLAINTIFFS' SPECIAL INTERROGATORIES, SET NO. ONE, INTERROGATORY NO. 2

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1 class members may also provide additional facts concerning charges raised in the complaint.”

2 Newberg on Class Actions, Fourth Edition, 2002, §15:13.

3 Additionally, the late Professor Newberg also offered other legitimate reasons why class  
4 counsel may wish to communicate with absent class members prior to certification:

5 (1) the filing of a class complaint tolls the statute of limitations, and this information  
6 would be of value to class members who may be uncertain how they may preserve  
their claims;

7 (2) in protracted litigation, when the court does not reach an early determination of the  
8 class issues, the class counsel may wish to notify absent class members, who may have  
learned of the action through attendant publicity, of the status of litigation;

9 (3) because absent class members need not enter an appearance or intervene in the  
10 action, they are entitled to rely on the class action attorney to prosecute the litigation  
on their behalf;

11 (4) communications with absent class members are appropriate as long as they are not  
12 considered abusive within the guidelines created by Gulf Oil Co. v. Bernard, Newberg  
on Class Actions, Fourth Edition, 2002, §15:12.

13 All of the reasons enumerated above are applicable to the instant case. Without the identity of the  
14 absent class members, Plaintiffs will be unable to carry out even one of these tasks.

15 **Class counsel and class representatives are fiduciaries to the absent class members.**

16 See Newberg on Class Actions, Fourth Edition, 2002, §15:3. As such, they must vigorously  
17 investigate and prosecute this action. It is only through the ability to communicate with the  
18 absent class members that the class representative and class counsel will be able to fulfill their  
19 ethical and fiduciary obligations. It is also noteworthy that Plaintiffs’ interest in effectively  
20 investigating and vigorously prosecuting this action on the behalf of the absent class members  
21 outweighs any perceived intrusion into the privacy of those very same absent class members. It  
22 would be improper to gag the class representative and class counsel by sustaining Defendants’  
23 objections.

24 In advancing the broad latitude of discovery, CCP §2017.010 provides that “Discovery  
25 may be obtained of the identity and location of persons having knowledge of discoverable  
26 matter...” Thus, the names, home addresses, and telephone numbers which are essential locating  
27 information are authorized under this CCP section. In fact, form interrogatories requesting this  
28 particular information have been expressly approved by the California Judicial Council.



Unquestionably, the names, addresses, and telephone numbers of class members and witnesses are reasonably calculated to lead to the discovery of admissible evidence since the class certification briefings will certainly contain information from that pool of witnesses. It would be interesting to see if Defendants would stipulate that no member of this witness pool, to wit, absent class members, will provide any declaration testimony in its class certification briefing. Absent such a stipulation this witness pool is plainly relevant for purposes of discovery.

**Defendants' interests are diametrically opposed to those of the absent class members, but Plaintiffs and Plaintiffs' counsel have an ethical and fiduciary duty to protect those absent class members.** In fact, one perspective on the relationship between the absent class and the class counsel would describe it as a "constructive attorney-client relationship." Newberg on Class Actions, Fourth Edition, 2002, §15:3. Any attempt by Defendants to "preserve the privacy rights" of the very individuals whose rights Defendants have allegedly violated is disingenuous.

Recently, the Second Appellate District confirmed parties' rights to names, addresses and telephone numbers in Parris v. Superior Court (2003) 109 Cal.App.4th 285 ("Parris"). The Appellate Court held that precertification communication with potential class members is protected by the First Amendment to the United States Constitution and remanded the court's denial of identification information, as there was no showing of potential for abuse.

### III.

#### **DEFENDANTS' OBJECTIONS HEREIN SHOULD BE OVERRULED**

##### **A. DEFENDANTS' "PRIVACY" OBJECTION SHOULD BE OVERRULED**

Defendants object to SROG No. Two, asserting: "Defendant objects to the Special Interrogatory to the extent it requests information protected by privacy rights and conflicts with Defendant's legal obligation to maintain the confidentiality of its employee's personnel data." Said objection is without merit.

The right to privacy is not absolute; it may be abridged to accommodate a compelling interest. Moskowitz v. Superior Court (1982) 137 Cal.App.3d 313, 316; El Dorado Savings & Loan Association v. Superior Court (1987) 190 Cal.App.3d 345. One such interest is "the

1 historically important state interest of facilitating the ascertainment of truth in connection with  
 2 legal proceedings.” *Moskowitz, supra*, 137 Cal.App.3d at 316.

3 The language of CCP §2017.010 is indeed broad and explicitly entitles each party to  
 4 discover the identity of witnesses, which include class members. To use the right to privacy to  
 5 preclude the release of the names of class members and witnesses violates the basic tenets  
 6 underlying discovery. There is an expressed compelling state interest in the “ascertainment of  
 7 truth” in these proceedings. That interest is particularly acute in instances such as this, in which  
 8 the defendant-employer has the upper hand with respect to critical information such as the home  
 9 addresses, and telephone numbers of class members/witnesses. The critical nature of this  
 10 information in a case of this nature makes it that much more compelling, demanding that any  
 11 minimal privacy right accorded to their location (the home addresses and telephone numbers of  
 12 these persons), is outweighed by the public policy of fair and open communication - toward the  
 13 ultimate goal of ascertaining the truth.

14 To the extent that any of these individuals continue to work at Defendants’ locations, it  
 15 would be impossible and improper to discuss Plaintiffs’ allegations with them at work.  
 16 Moreover, the discussion of personal legal matters such as this is properly conducted outside of  
 17 the workplace. Plaintiffs’ ability to conduct their investigation outside of Defendants’ place of  
 18 business not only avoids any interference with Defendants’ operations but also ensures the  
 19 confidentiality of the communication. Finally, with respect to those persons who are no longer  
 20 employed by the company, Plaintiffs are completely without means to contact them unless  
 21 Defendants provide this information.

22 Accordingly, Defendants’ “privacy” objection should be overruled.

23 **B. DEFENDANTS’ “VAGUE AND AMBIGUOUS” OBJECTION SHOULD BE**  
 24 **OVERRULED**

25 Defendants object to SROG No. Two, asserting: “Defendant objects to the Special  
 26 Interrogatory to the extent it is vague and ambiguous as to the term “putative class members,”  
 27 including to the extent that Plaintiff has defined the putative class as including people in “job  
 28 positions with substantially similar titles and duties in that Division.” Said objection is without

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merit. Defendant has been able to respond to Special Interrogatory No. 1, with a number certain of the employees at issue. Therefore, Defendant *can* ascertain for whom Plaintiffs seek the identity. Accordingly, Defendants' "vague and ambiguous" objection should be overruled.

**C. DEFENDANTS' "OVERBROAD, OPPRESSIVE, BURDENSOME AND HARASSING" OBJECTION SHOULD BE OVERRULED**

Defendants object to SROG No. Two, asserting: "Defendant objects to the Special Interrogatory to the extent it is overbroad, oppressive, burdensome, and harassing." Said objection is without merit. The production of information sought by this discovery is no more than what is necessary for Plaintiffs to conduct an investigation and prepare this case for certification and/or trial. As discussed *infra*, courts have upheld the disclosure of more information than presently sought. Further, it is absurd to consider a request for contact information for putative class members in a class action wage and hour lawsuit as excessive. Accordingly, Defendants' "burdensome and oppressive" objection is without merit.

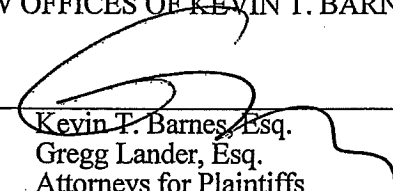
**IV.**

**CONCLUSION**

For all of the foregoing reasons, Plaintiffs respectfully request that this Court Order Defendants to provide verified responses, without objections, to the requested discovery within twenty (20) days. In the alternative, Plaintiffs would request some other appropriate relief to allow Plaintiffs to contact class members and conduct discovery.

Dated: April 18, 2008

LAW OFFICES OF KEVIN T. BARNES

By:   
Kevin T. Barnes, Esq.  
Gregg Lander, Esq.  
Attorneys for Plaintiffs



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Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED**

JOSE JIMENEZ, on behalf of himself and all  
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New  
 York corporation; and DOES 1 to 100,  
 inclusive,

Defendants.

Case No.: BC383006

Dept.: 45

Honorable: Mel Red Recana

**Hearing:**

**Date: June 6, 2008**

**Time: 8:30 a.m.**

**CLASS ACTION**

**PLAINTIFFS' SEPARATE  
 STATEMENT IN SUPPORT OF  
 PLAINTIFFS' MOTION TO COMPEL  
 RESPONSE TO PLAINTIFFS'  
 SPECIAL INTERROGATORIES, SET  
 NO. ONE (1), INTERROGATORY NO.  
 TWO**

Action Filed: December 28, 2007

[PLAINTIFFS' MOTION TO COMPEL RESPONSE FILED CONCURRENTLY HERewith]

Plaintiff Jose Jimenez submit this Separate Statement, pursuant to California Rules of Court, Rule 3.1020, in support of Plaintiffs' Motion to Compel Response to Plaintiffs' Special Interrogatories, Set No. One (1), Interrogatory No. Two.

**INTERROGATORY NO. TWO.**

IDENTIFY each putative CLASS MEMBER.

- 1 -

**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS'  
 MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
 INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO**

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**DEFENDANTS' RESPONSE TO INTERROGATORY NO. TWO:**

Defendant objects to the Special Interrogatory to the extent it is vague and ambiguous as to the term "putative class members," including to the extent that Plaintiff has defined the putative class as including people in "job positions with substantially similar titles and duties in that Division." Defendant objects to the Special Interrogatory to the extent it is overbroad, oppressive, burdensome, and harassing. Defendant objects to the Special Interrogatory to the extent it requests information protected by privacy rights and conflicts with Defendant's legal obligation to maintain the confidentiality of its employee's personnel data.

**PLAINTIFFS' ARGUMENTS FOR FURTHER RESPONSE TO INTERROGATORY NO. TWO:****PLAINTIFFS' MOTION TO COMPEL IS APPROPRIATE BECAUSE THE SCOPE OF DISCOVERY IS DIRECTLY RELEVANT TO THE SUBJECT MATTER INVOLVED**

If discovery responses are incomplete, inadequate, evasive, or the **objections are meritless or too general**, a plaintiff may bring a motion to compel further responses. Deyo v. Kilbourne (1978) 84 Cal.App.3d 771.

For the foregoing reasons, Plaintiffs believe they are entitled to the names, addresses, and telephone numbers of all of Defendants' California-based employees who are and were similarly situated to Plaintiffs herein during the relevant time period.

**California courts have reiterated that discovery provisions are to be liberally construed in favor of disclosure.** In interpreting the former Discovery Act of 1957, the Supreme Court stated in the still important seminal case of Greyhound Corp. v. Superior Court (1961) 56 Cal.2d 355, 378 that disclosure in discovery exists "as a matter of right unless statutory or public policy considerations clearly prohibit it." This concept of liberal discovery is codified in the Discovery Act of 1986. Any information that "might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement" falls within the definition of permissible discovery. Lipton v. Superior Court (1996) 48 Cal.App.4th 1599, 1611. Discovery rules are applied liberally in favor of discovery, and "(contrary to popular belief) **fishing expeditions are permissible in some cases.**" Gonzales v. Superior Court (1995) 33 Cal.App.4th

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**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO**

1 1539, 1546 (emphasis added).

2 Further, all doubts about discovery are resolved in favor of disclosure. Glenfed Dev.  
3 Corp. v. Superior Court (1997) 53 Cal.App.4th 1113, 1119. By making both the scope of  
4 discovery and the court's discretion to limit it very broad, the Legislature has assured that  
5 California trial courts will continue the common law tradition of flexibility in applying legal  
6 concepts to specific discovery disputes and reaching reasonable conclusions.

7 Plaintiffs' discovery seeks information directly relevant to the disclosure of facts  
8 supporting key contentions. (See CCP §382) Defendants' apparent goal is to deny Plaintiffs the  
9 ability to conduct discovery into Defendants' defenses in this case and thus unfairly prejudice  
10 Plaintiffs at the time of Plaintiffs' Motion for Class Certification. Plaintiffs are entitled to  
11 straightforward, non-evasive and complete discovery responses.

12 **Here, Plaintiffs are simply asking for the identity of putative class members, who**  
13 **are key fact witnesses** both for the current purposes of class certification, as well as for the trial  
14 herein. The putative class members possess unique and important knowledge of facts concerning  
15 the duties, hours, policies, procedures, and tasks, among other things, which are at the heart of  
16 this case. The names, addresses and telephone numbers of the class members are reasonably  
17 calculated to lead to the discovery of admissible evidence. Without this information, Plaintiffs  
18 are prevented from ascertaining information essential to this case. Further, Defendants have  
19 unfettered access to this same information, which fatally prejudices Plaintiffs' ability to conduct  
20 the necessary discovery.

21 The Court of Appeal, Second District, considered and evaluated the purpose of the  
22 statutory authorization for the discovery of the identity and location of witnesses in City of Long  
23 Beach v. Superior Court (1976) 64 Cal.App.3d 65, when faced with the issue of whether the  
24 names and locations of witnesses are discoverable or are protected by the attorney work product  
25 privilege. The Court held:

26 The legitimate interests and purposes of discovery are generally amply protected  
27 by the requirement that an adverse party is entitled to the identity and location of  
28 all persons with knowledge of relevant facts...Its basis is that persons who have  
relevant knowledge are not to be considered the witnesses of any particular party  
to the litigation. **Ensuring the availability to all parties of the right to contact**

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**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO**

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1 and to take depositions of these witnesses provides adequate safeguards against  
2 surprise or false testimony. Id. at 76-77 (emphasis added).

3 Defendants' attempt to hide the location of these individuals is inherently abhorrent to  
4 California's discovery rules. By withholding the identities of the most important witnesses,  
5 Defendants critically obstruct Plaintiffs' access to these persons. Such unilateral control over the  
6 discovery process by a party to the litigation is not what the Legislature intended. Defendants  
7 are, in essence, securing these witnesses as their own, thereby entitling Defendants to control  
8 what information is brought out in discovery.

9 In fact, from past experience with class certification, this Court is certainly aware that  
10 defendants often rely on declarations from the putative class members (usually current  
11 employees) in order to oppose class certification. Therefore, the Court cannot allow Defendants  
12 the opportunity to freely use this information while simultaneously seeking to bar Plaintiffs'  
13 access to the same.

14 Plaintiffs are entitled to this information for all the reasons expressed above as well as the  
15 facts that this information: 1) is relevant to class certification issues of commonality, typicality  
16 and numerosity; 2) is necessary for Plaintiffs to conduct an adequate precertification and/or  
17 pretrial investigation; 3) is essential for Plaintiffs to communicate with the putative class  
18 members; 4) is necessary for Plaintiffs to carry out fiduciary and ethical duties owed to the  
19 absent class members; and 5) creates no risk of prejudice to Defendants by such disclosure.

20 Further, CCP §2017.010 provides in pertinent part that "any party may obtain discovery  
21 regarding any matter, not privileged, that is relevant to the subject matter involved in the pending  
22 action or to the determination of any motion made in the action, if the matter either is itself  
23 admissible in evidence or appears reasonably calculated to lead to the discovery of admissible  
24 evidence." As previously stated, here it is fundamental that Defendants are required to disclose  
25 the identity and location of persons having knowledge of particular relevant facts. Deyo v.  
26 Kilbourne, supra. Presently, Defendants have sole access to the putative class members.  
27 Plaintiffs are seeking the identity of these individuals in order to further Plaintiffs' investigative  
28 efforts in preparation for class certification.

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**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO**

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1 As the court in Atari, Inc. v. Superior Court (1985) 166 Cal.App.3d 867 ("Atari") stated:

2 "A determination 'whether the common questions are sufficiently pervasive to permit  
3 adjudication in a class action rather than in a multiplicity of suits' cannot realistically be  
4 made until the parties have had a chance to conduct reasonable investigation." Id. at 870.  
Likewise, in Valley Bank of Nevada v. Superior Court (1975) 15 Cal.3d 652, the

5 plaintiffs sought customer information that the defendant claimed was confidential. The  
6 defendant objected on the grounds of relevancy and privacy. The California Supreme Court  
7 rejected that defendant's arguments, holding that the discovery of the names was relevant to the  
8 subject matter of the action. The court approved a communication to the customers, i.e., the ones  
9 who would have standing to assert a privacy objection, affording them with an opportunity to  
10 assert their interests by objecting to disclosure.

11 **Plaintiffs herein will suffer an immeasurable prejudice without the ability to**  
12 **conduct reasonable investigation in anticipation of class certification.** Plaintiffs' ability to  
13 communicate with absent class members will be effectively silenced, while Defendants will be  
14 afforded total access to the same group. All counsel are permitted fair precertification  
15 communication pursuant to Gulf Oil Co. v. Bernard (1981) 452 U.S. 89 and its progeny.  
16 Consistent with fundamental fairness, in the absence of abuse, neither party should be precluded  
17 from investigating and preparing its case for certification. Atari, supra, at 873. The Atari Court  
18 approved free, open, and fair communication between any party to the litigation and the absent  
19 class members.

20 By denying Plaintiffs access to the classes, Defendants seek to trump the reasoning of  
21 Atari in that the Court will have imposed upon Plaintiffs a practical gag. Tilting the playing field  
22 (in Defendants' favor) in such a manner would be fundamentally unfair.

23 A class representative has a right, if not an outright duty, to contact all absent class  
24 members in the course of prosecuting a class action "...to discover certain information in the  
25 possession of absent class members, or to ascertain the whereabouts of other class members, in  
26 order to show the impracticability of joinder or to refine the class to ensure certification. Absent  
27 class members may also provide additional facts concerning charges raised in the complaint."

28 Newberg on Class Actions, Fourth Edition, 2002, §15:13.

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**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO**



1 Additionally, the late Professor Newberg also offered other legitimate reasons why class  
2 counsel may wish to communicate with absent class members prior to certification:

3 (1) the filing of a class complaint tolls the statute of limitations, and this information  
4 would be of value to class members who may be uncertain how they may preserve  
their claims;

5 (2) in protracted litigation, when the court does not reach an early determination of the  
6 class issues, the class counsel may wish to notify absent class members, who may have  
learned of the action through attendant publicity, of the status of litigation;

7 (3) because absent class members need not enter an appearance or intervene in the  
8 action, they are entitled to rely on the class action attorney to prosecute the litigation  
on their behalf;

9 (4) communications with absent class members are appropriate as long as they are not  
10 considered abusive within the guidelines created by Gulf Oil Co. v. Bernard, *Newberg*  
*on Class Actions*, Fourth Edition, 2002, §15:12.

11 All of the reasons enumerated above are applicable to the instant case. Without the identity of the  
12 absent class members, Plaintiffs will be unable to carry out even one of these tasks.

13 **Class counsel and class representatives are fiduciaries to the absent class members.**

14 *See Newberg on Class Actions*, Fourth Edition, 2002, §15:3. As such, they must vigorously  
15 investigate and prosecute this action. It is only through the ability to communicate with the  
16 absent class members that the class representative and class counsel will be able to fulfill their  
17 ethical and fiduciary obligations. It is also noteworthy that Plaintiffs' interest in effectively  
18 investigating and vigorously prosecuting this action on the behalf of the absent class members  
19 outweighs any perceived intrusion into the privacy of those very same absent class members. It  
20 would be improper to gag the class representative and class counsel by sustaining Defendants'  
21 objections.

22 In advancing the broad latitude of discovery, CCP §2017.010 provides that "Discovery  
23 may be obtained of the identity and location of persons having knowledge of discoverable  
24 matter..." Thus, the names, home addresses, and telephone numbers which are essential locating  
25 information are authorized under this CCP section. In fact, form interrogatories requesting this  
26 particular information have been expressly approved by the California Judicial Council.

27 Unquestionably, the names, addresses, and telephone numbers of class members and  
28 witnesses are reasonably calculated to lead to the discovery of admissible evidence since the

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**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO**

1 class certification briefings will certainly contain information from that pool of witnesses. It  
 2 would be interesting to see if Defendants would stipulate that no member of this witness pool, to  
 3 wit, absent class members, will provide any declaration testimony in its class certification  
 4 briefing. Absent such a stipulation this witness pool is plainly relevant for purposes of discovery.

5 **Defendants' interests are diametrically opposed to those of the absent class**  
 6 **members, but Plaintiffs and Plaintiffs' counsel have an ethical and fiduciary duty to protect**  
 7 **those absent class members.** In fact, one perspective on the relationship between the absent  
 8 class and the class counsel would describe it as a "constructive attorney-client relationship."  
 9 Newberg on Class Actions, Fourth Edition, 2002, §15:3. Any attempt by Defendants to "preserve  
 10 the privacy rights" of the very individuals whose rights Defendants have allegedly violated is  
 11 disingenuous.

12 Recently, the Second Appellate District confirmed parties' rights to names, addresses and  
 13 telephone numbers in Parris v. Superior Court (2003) 109 Cal.App.4th 285 ("Parris"). The  
 14 Appellate Court held that precertification communication with potential class members is  
 15 protected by the First Amendment to the United States Constitution and remanded the court's  
 16 denial of identification information, as there was no showing of potential for abuse.

17 **DEFENDANTS' OBJECTIONS HEREIN SHOULD BE OVERRULED**

18 **A. DEFENDANTS' "PRIVACY" OBJECTION SHOULD BE OVERRULED**

19 Defendants object to SROG No. Two, asserting: "Defendant objects to the Special  
 20 Interrogatory to the extent it requests information protected by privacy rights and conflicts with  
 21 Defendant's legal obligation to maintain the confidentiality of its employee's personnel data."  
 22 Said objection is without merit.

23 The right to privacy is not absolute; it may be abridged to accommodate a compelling  
 24 interest. Moskowitz v. Superior Court (1982) 137 Cal.App.3d 313, 316; El Dorado Savings &  
 25 Loan Association v. Superior Court (1987) 190 Cal.App.3d 345. One such interest is "the  
 26 historically important state interest of facilitating the ascertainment of truth in connection with  
 27 legal proceedings." Moskowitz, supra, 137 Cal.App.3d at 316.

28 The language of CCP §2017.010 is indeed broad and explicitly entitles each party to

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**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS'  
 MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
 INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO**

1 discover the identity of witnesses, which include class members. To use the right to privacy to  
 2 preclude the release of the names of class members and witnesses violates the basic tenets  
 3 underlying discovery. There is an expressed compelling state interest in the "ascertainment of  
 4 truth" in these proceedings. That interest is particularly acute in instances such as this, in which  
 5 the defendant-employer has the upper hand with respect to critical information such as the home  
 6 addresses, and telephone numbers of class members/witnesses. The critical nature of this  
 7 information in a case of this nature makes it that much more compelling, demanding that any  
 8 minimal privacy right accorded to their location (the home addresses and telephone numbers of  
 9 these persons), is outweighed by the public policy of fair and open communication - toward the  
 10 ultimate goal of ascertaining the truth.

11 To the extent that any of these individuals continue to work at Defendants' locations, it  
 12 would be impossible and improper to discuss Plaintiffs' allegations with them at work.  
 13 Moreover, the discussion of personal legal matters such as this is properly conducted outside of  
 14 the workplace. Plaintiffs' ability to conduct their investigation outside of Defendants' place of  
 15 business not only avoids any interference with Defendants' operations but also ensures the  
 16 confidentiality of the communication. Finally, with respect to those persons who are no longer  
 17 employed by the company, Plaintiffs are completely without means to contact them unless  
 18 Defendants provide this information.

19 Accordingly, Defendants' "privacy" objection should be overruled.

20 **B. DEFENDANTS' "VAGUE AND AMBIGUOUS" OBJECTION SHOULD BE**  
 21 **OVERRULED**

22 Defendants object to SROG No. Two, asserting: "Defendant objects to the Special  
 23 Interrogatory to the extent it is vague and ambiguous as to the term "putative class members,"  
 24 including to the extent that Plaintiff has defined the putative class as including people in "job  
 25 positions with substantially similar titles and duties in that Division." Said objection is without  
 26 merit. Defendant has been able to respond to Special Interrogatory No. 1, with a number certain  
 27 of the employees at issue. Therefore, Defendant *can* ascertain for whom Plaintiffs seek the  
 28 identity. Accordingly, Defendants' "vague and ambiguous" objection should be overruled.

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**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS'  
 MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
 INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO**



1 C. DEFENDANTS' "OVERBROAD, OPPRESSIVE, BURDENSOME AND  
2 HARASSING" OBJECTION SHOULD BE OVERRULED

3 Defendants object to SROG No. Two, asserting: "Defendant objects to the Special  
4 Interrogatory to the extent it is overbroad, oppressive, burdensome, and harassing." Said  
5 objection is without merit. The production of information sought by this discovery is no more  
6 than what is necessary for Plaintiffs to conduct an investigation and prepare this case for  
7 certification and/or trial. As discussed infra, courts have upheld the disclosure of more  
8 information than presently sought. Further, it is absurd to consider a request for contact  
9 information for putative class members in a class action wage and hour lawsuit as excessive.  
10 Accordingly, Defendants' "burdensome and oppressive" objection is without merit.

11 Dated: April 21, 2008

LAW OFFICES OF KEVIN T. BARNES

12 By: 

13 Kevin T. Barnes, Esq.  
14 Gregg Lander, Esq.  
15 Attorneys for Plaintiffs  
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**PLAINTIFFS' SEPARATE STATEMENT IN SUPPORT OF PLAINTIFFS'  
MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO**

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED**

JOSE JIMENEZ, on behalf of himself and all  
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Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New  
 York corporation; and DOES 1 to 100,  
 inclusive,

Defendants.

Case No.: BC383006  
 Dept.: 45  
 Honorable: Mel Red Recana

**Hearing:**  
**Date: June 6, 2008**  
**Time: 8:30 a.m.**

**CLASS ACTION**

**DECLARATION OF GREGG  
 LANDER IN SUPPORT OF  
 PLAINTIFFS' MOTION AND  
 MOTION TO COMPEL RESPONSE  
 TO PLAINTIFFS' SPECIAL  
 INTERROGATORIES, SET NO. ONE  
 (1); INTERROGATORY NO. TWO**

Action Filed: December 28, 2007

**DECLARATION OF GREGG LANDER**

I, Gregg Lander declare:

1. Attached hereto as Exhibit "1" is a true and correct copy of Plaintiffs' Special Interrogatories, Set No. One (1) propounded upon Defendant Sears, Roebuck and Co.
2. Attached hereto as Exhibit "2" is a true and correct copy of Defendant's Responses to Plaintiffs' Special Interrogatories, Set No. One (1).

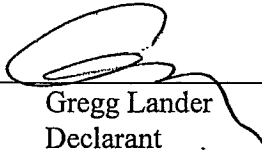
- 1 -

**DECLARATION OF GREGG LANDER IN SUPPORT OF PLAINTIFFS' MOTION  
 AND MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
 INTERROGATORIES, SET NO. ONE (1); INTERROGATORY NO. TWO**

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1 3. Attached hereto as Exhibit "3" is a true and correct copy of the meet and confer  
2 exchange between the parties regarding the discovery at issue.

3 Executed April 21, 2008 at Los Angeles, California.

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6 Gregg Lander  
7 Declarant  
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**DECLARATION OF GREGG LANDER IN SUPPORT OF PLAINTIFFS' MOTION  
AND MOTION TO COMPEL RESPONSE TO PLAINTIFFS' SPECIAL  
INTERROGATORIES, SET NO. ONE (1); INTERROGATORY NO. TWO**

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## EXHIBIT 1

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**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED**

JOSE JIMENEZ, on behalf of himself and all  
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New  
 York corporation; and DOES 1 to 100,  
 inclusive,

Defendants.

Case No.: BC383006

Dept.: 45

Honorable: Mel Red Recana

**CLASS ACTION**

**PLAINTIFFS' SPECIALLY  
 PREPARED INTERROGATORIES,  
 SET NO. ONE**

Action Filed: December 28, 2007

**PROPOUNDING PARTY:** Plaintiff, JOSE JIMENEZ

**RESPONDING PARTY:** Defendant, SEARS, ROEBUCK AND CO.

**SET NUMBER:** One

TO RESPONDING PARTY, AND TO ITS ATTORNEYS OF RECORD:

PROPOUNDING PARTY hereby requests that RESPONDING PARTY respond in a  
 timely manner, under oath and pursuant to the provisions of California Code of Civil Procedure  
 to the following discovery requests.

**DEFINITIONS**

The following definitions, where applicable, should be used regarding these discovery  
 requests. In addition, some discovery requests herein may contain additional specific definitions.

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1 {"CLASS MEMBER" refers to the putative class and means any PERSON who  
2 WORKED for YOU in the State of California in the position of "Assistant Manager" positions in  
3 YOUR Automotive Center Division, including any of (hereinafter including any of Defendants'  
4 job positions with substantially similar titles and duties in that Division) during the RELEVANT  
5 TIME PERIOD.}

6 {"DEFENDANT," YOU," or "YOUR," means RESPONDING PARTY, Defendant in  
7 the instant action, YOUR parent corporation, YOUR subsidiaries, YOUR officers, YOUR  
8 directors, YOUR managing agents, YOUR managers, YOUR agents, YOUR investigators,  
9 YOUR attorneys, their agents, their employees and anyone else acting or who has acted on  
10 YOUR behalf.}

11 {"IDENTIFY" in the context of a PERSON means to provide, in electronic format (or, if  
12 unable to comply, in any written form) the name, last known residence address and last known  
13 residence telephone number.}

14 {"PERSON" includes a natural person, firm, association, organization, partnership,  
15 business, trust, corporation, or public entity.}

16 {"RELEVANT TIME PERIOD" means the period from four (4) years before the filing of  
17 the Complaint herein through the present and continuing forward to the time of final judgment in  
18 this matter.}

19 {"WORKED" means during that time in which the individual was suffered and/or  
20 permitted to work by YOU and/or was required to remain under YOUR control.}

21 **SPECIALLY PREPARED INTERROGATORIES**

22 **INTERROGATORY NO. 1.**

23 How many putative CLASS MEMBERS are there?

24 **INTERROGATORY NO. 2.**

25 IDENTIFY each putative CLASS MEMBER.

26 (Hereby, PROPOUNDING PARTY bypasses the ambiguity of asking RESPONDING PARTY  
27 to generally identify all persons having knowledge of facts concerning such matters as hours,  
28 duties, policies, procedures and tasks, in order to determine the community of interest

requirements which embodies three factors, i.e. whether there are in this case: 1) predominant common questions of law or fact, 2) class representative(s) with claims or defenses typical of the class, and 3) class representative(s) who can adequately represent the proposed class(es). See Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 462, 470. Further, to address any concerns about privacy rights, PROPOUNDING PARTY is willing to enter a protective order keeping the use of the requested information confined to this action.)

Dated: January 18, 2008

LAW OFFICES OF KEVIN T. BARNES

By: \_\_\_\_\_  
 Kevin T. Barnes, Esq.  
 Gregg Lander, Esq.  
 Attorneys for Plaintiffs

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am over the age of 18 years and not a party to this action. My business address is 5670 Wilshire Boulevard, Suite 1460, Los Angeles, California 90036-5627, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I served the attached document(s) described as:

**PLAINTIFFS' SPECIALLY PREPARED INTERROGATORIES, SET NO. ONE**

on the interested parties in this action, addressed as follows:

Hwannie Lee Shen, Esq.  
WINSTON & STRAWN LLP  
333 South Grand Avenue, 38th Floor  
Los Angeles, CA 90071  
Tel.: (213) 615-1700 / Fax: (213) 615-1750  
Email: HShen@winston.com

Joseph Antonelli, Esq.  
Janelle Carney, Esq.  
LAW OFFICE OF JOSEPH ANTONELLI  
1000 Lakes Drive, Suite 450  
West Covina, CA 91790-2918  
Tel.: (626) 917-6228 / Fax: (626) 917-7686  
Email: JAntonelli@antonellilaw.com

using the following service method(s):

**X VIA MAIL:** I deposited the document(s) to be served at: **5670 Wilshire Boulevard, Los Angeles, CA**, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on **January 18, 2008**, at Los Angeles, California.

\_\_\_\_\_  
**Gregg Lander**



## EXHIBIT 2

Winston & Strawn LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543

JESSIE A. KOHLER (SBN 179363)  
JULIA LAPIS BLAKESLEE (SBN 199365)  
HWANNIE L. SHEN (SBN 222342)  
AUDREY SHEN CHUI (SBN 254510)  
WINSTON & STRAWN LLP  
333 South Grand Avenue, 38th Floor  
Los Angeles, CA 90071-1543  
Telephone: 213-615-1700  
Facsimile: 213-615-1750

Attorneys for Defendant  
SEARS, ROEBUCK AND CO.

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT

JOSE JIMENEZ, on behalf of himself and all  
others similarly situated,

Plaintiffs,

vs.

SEARS, ROEBUCK AND CO., a New York  
corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. BC 383006

Assigned to the Honorable Mel Red Recana

**DEFENDANT SEARS, ROEBUCK AND  
CO.'S RESPONSES TO PLAINTIFF'S  
SPECIALLY PREPARED  
INTERROGATORIES**

PROPOUNDING PARTY: Jose Jimenez

RESPONDING PARTY: Sears, Roebuck and Co.

SET NO.: One (1)

Pursuant to California Code of Civil Procedure Sections 2030.210, *et seq.*, Defendant Sears, Roebuck and Co. ("Defendant") hereby responds and objects to Plaintiff Jose Jimenez' ("Plaintiff") First Set of Specially Prepared Interrogatories ("Special Interrogatories").

### PRELIMINARY STATEMENT

The following responses and objections to Plaintiff's Special Interrogatories are based upon Defendant's knowledge, information, and belief at this time. Defendant has made a reasonable and good faith effort to respond. However, Defendant has not fully completed its investigation relating to the facts in this action, has not fully completed discovery in this action, and has not completed preparation for trial. The responses contained herein are based only on such information and documents which are presently available and specifically known to Defendant, and disclose only those contentions which presently occur to Defendant. It is anticipated that further discovery, independent investigation, legal research and analysis will supply additional facts and meaning to the known facts as well as establish entirely new factual conclusions and legal conclusions, all of which may lead to substantial additions to, and variations in, the contentions set forth herein. Defendant specifically reserves the right to amend these responses should additional information become available and to use such information.

No incidental or implied admissions are intended in this response. The fact that Defendant has responded to the Special Interrogatories should not be taken as an admission that Defendant accepts or admits the existence of any facts set forth or assumed by the Special Interrogatories or that such response constitutes admissible evidence. The fact that Defendant has responded to the Special Interrogatories is not intended to and shall not be construed to be a waiver by Defendant of all or any part of any objection to the Special Interrogatories.

These introductory paragraphs shall apply to the responses given herein and shall be incorporated by this reference as though fully set forth in each of the following responses. Defendant makes this response to the Special Interrogatories solely for the purpose of this action. The response is subject to all objections as to competence, relevance, materiality, propriety, admissibility, privilege, privacy, proprietary information, trade secrets and the like, and any and all other objections on grounds that would require the exclusion of the response herein if such were

1 offered in court, all of which objections and grounds are reserved and may be interposed at the time  
2 of trial.

### 3 GENERAL OBJECTIONS

4 1. Defendant objects to each Special Interrogatory to the extent it requests information  
5 protected by the attorney-client privilege. Defendant will not provide any information that is  
6 protected by the attorney-client privilege.

7 2. Defendant objects to each Special Interrogatory to the extent it requests information  
8 protected by the attorney work product doctrine and/or to the extent it seeks documents and/or  
9 information concerning the mental impressions, conclusions, opinions, and legal theories of  
10 Defendant's counsel or of consultants retained or formally employed to assist Defendant and its  
11 counsel in preparation for trial. Defendant will not provide any information that is protected by the  
12 attorney work product doctrine.

13 3. Defendant objects to each Special Interrogatory to the extent it seeks information that  
14 is neither relevant to the subject matter of this action nor reasonably calculated to lead to the  
15 discovery of admissible evidence.

16 4. Defendant objects to each Special Interrogatory to the extent it is vague and  
17 ambiguous.

18 5. Defendant objects to each Special Interrogatory to the extent it is overbroad,  
19 oppressive, burdensome, and harassing.

20 6. Defendant objects to the Special Interrogatory collectively in that they are  
21 collectively overbroad, oppressive, burdensome, and harassing.

22 7. Defendant objects to each Special Interrogatory to the extent it requests information  
23 that is repetitive and duplicative.

24 8. Defendant objects to each Special Interrogatory to the extent it is compound,  
25 conjunctive, and/or disjunctive.

26 9. Defendant objects to each Special Interrogatory to the extent it requests information  
27 protected by privacy rights.

28

Winston & Strawn LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543

10. Defendant objects to each Special Interrogatory to the extent it requests information that constitutes confidential proprietary and/or financial information, and/or trade secrets.

11. Defendant objects to each Special Interrogatory to the extent it calls for an improper legal conclusion.

12. Defendant objects to each Special Interrogatory to the extent it seeks information concerning Plaintiff which is equally available or which is already in Plaintiff's possession, and is therefore, annoying, harassing, and unreasonable.

13. Defendant objects to the Special Interrogatories on the grounds that the discovery includes a preface or instruction and each interrogatory is not "full and complete in and of itself" in violation of California Code of Civil Procedure Section 2030.060.

Defendant provides the following responses without waiving and subject to the foregoing objections. These objections are incorporated by reference into each response below.

### **RESPONSES TO SPECIAL INTERROGATORIES**

#### **SPECIAL INTERROGATORY NO. 1:**

How may putative CLASS MEMBERS are there?

#### **RESPONSE TO INTERROGATORY NO. 1:**

Defendant objects to the Special Interrogatory to the extent it is vague and ambiguous as to the term "putative class members", including to the extent that Plaintiff has defined the putative class as including people in "job positions with substantially similar titles and duties in that Division."

Without waiving and subject to the foregoing objection, the Preliminary Statement, and General Objections, Defendant responds that 268 people were employed in the job positions of "Auto Center Assistant Coach" and "Assistant Auto Center Manager" in California from December 28, 2003 to the present.

#### **SPECIAL INTERROGATORY NO. 2:**

IDENTIFY each putative CLASS MEMBER.

(Hereby, PROPOUNDING PARTY bypasses the ambiguity of asking RESPONDING PARTY to generally identify all persons having knowledge of facts concerning such matters as hours, duties, policies, procedures and tasks, in order to determine the community of interest

requirements which embodied three factors, i.e. whether there are in this case: 1) predominant common questions of law or fact, 2) class representative(s) with claims or defenses typical of the class, and 3) class representative(s) who can adequately represent the proposed class(es). See Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 462, 470. Further, to address any concerns about privacy rights, PROPOUNDING PARTY is willing to enter a protective order keeping the use of the requested information confined to this action.

**RESPONSE TO INTERROGATORY NO. 2:**

Defendant objects to the Special Interrogatory to the extent it is vague and ambiguous as to the term "putative class members", including to the extent that Plaintiff has defined the putative class as including people in "job positions with substantially similar titles and duties in that Division." Defendant objects to the Special Interrogatory to the extent it is overbroad, oppressive, burdensome, and harassing. Defendant objects to the Special Interrogatory to the extent it requests information protected by privacy rights and conflicts with Defendant's legal obligation to maintain the confidentiality of its employee's personnel data.

Dated: February 22, 2008

WINSTON & STRAWN LLP  
JESSIE A. KOHLER  
JULIA LAPIS BLAKESLEE

By: 

Jessie A. Kohler  
Attorneys for Defendant  
SEARS, ROEBUCK AND CO.

VERIFICATION

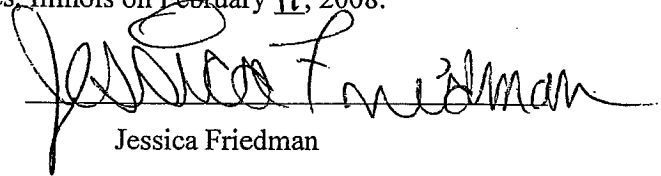
I, Jessica Friedman, declare as follows:

I am Assistant Corporate Secretary and an authorized agent for the purpose of executing this document on behalf of Defendant Sears, Roebuck and Co.

While I do not have personal knowledge of all of the facts recited in Sears, Roebuck and Co.'s Responses to Plaintiff's Specially Prepared Interrogatories, the statements and information made herein have been collected and made available to me by counsel and employees of Sears, Roebuck and Co.; the information contained herein is true and correct to the best of my knowledge and belief and the document is, therefore, verified on behalf of Sears, Roebuck and Co.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Hoffman Estates, Illinois on February 19, 2008.

  
Jessica Friedman

Winston & Strawn LLP  
333 South Grand Avenue  
Los Angeles, CA 90071-1543

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA )  
 3 COUNTY OF LOS ANGELES ) ss

4 I am a resident of the State of California, over the age of eighteen years, and not a party to  
 5 the within action. My business address is Winston & Strawn LLP, 333 South Grand Avenue, Los  
 Angeles, CA 90071-1543. On February 22, 2008, I served the within document(s):

6 **DEFENDANT SEARS, ROEBUCK AND CO.'S RESPONSES TO PLAINTIFF'S**  
 7 **SPECIALLY PREPARED INTERROGATORIES**

8 ☒ by placing the document(s) listed above in a sealed envelope with postage thereon  
 fully prepaid, in the United States mail at Los Angeles, California, addressed as set  
 forth below.

9 ☐ On February 22, 2008, I sent such document(s) from facsimile machine 213-615-  
 10 1750. I certify that said transmission was completed and that all pages were received  
 and that a report was generated by facsimile machine 213-615-1750 which confirms  
 said transmission and receipt.

11 ☐ by causing to be personally delivered the document(s) listed above to the person(s) at  
 the address(es) set forth below.

12 ☐ by causing the document(s) listed above to be delivered via overnight delivery  
 (Federal Express) to the person(s) at the address(es) set forth below.

13 ☐ by causing the document(s) listed above to be delivered via overnight delivery (United  
 14 Parcel Service (UPS) to the person(s) at the address(es) set forth below.

15 Kevin T. Barnes, Esq.  
 16 Gregg Lander, Esq.  
 17 Law Offices of Kevin T. Barnes  
 5670 Wilshire Boulevard, Suite 1460  
 Los Angeles, CA 90036-5627

18 Joseph Antonelli, Esq.  
 19 Janelle Carney, Esq.  
 Law Office of Joseph Antonelli  
 1000 Lakes Drive, Suite 450  
 West Covina, CA 91790

20 I am readily familiar with the firm's practice of collection and processing correspondence for  
 21 mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day  
 22 with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of  
 23 the party served, service is presumed invalid if postal cancellation date or postage meter date is more  
 than one day after the date of deposit for mailing an affidavit.

24 I declare under penalty of perjury under the laws of the State of California that the above is  
 25 true and correct.

26 Executed on February 22, 2008, at Los Angeles, California.

27   
 28 Myrna Fuentes



## EXHIBIT 3

Gregg Lander

---

**From:** Gregg Lander [lander@kbarnes.com]  
**Sent:** Monday, March 03, 2008 8:43 PM  
**To:** HShen@winston.com  
**Cc:** Lander@kbarnes.com; Barnes@kbarnes.com; DP; jantonelli@antonellilaw.com; jcarney@antonellilaw.com  
**Subject:** Sears (v. Jimenez) Discovery Set 1  
**Importance:** High

3/3/08

Re: Jimenez v. Sears

Dear Counsel,

Please allow this letter to serve as Plaintiffs' attempt to informally resolve a discovery dispute involving Defendants' responses to Plaintiffs' Special Interrogatories, Set No. 1 and Requests for Production of Documents, Set No. 1. Plaintiffs respectfully request a written response to this letter by **4:00 p.m. on March 14, 2008**. If no such response is received, Plaintiffs will assume that Defendants prefer that the Court decide this issue and will immediately thereafter prepare and file a motion to compel the requested information.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

On or about January 18, 2008, Plaintiffs propounded Requests for Production of Documents ("RFPD"), Set No. One (1) upon Defendants by mail, consisting of three discovery requests.

Defendants responded to RFPD Nos. 1 and 2 by advising that Defendant "will produce" the requested documents "that it has located in its possession, custody, or control." Said responses do not conform with the Code of Civil Procedure. Please supplement with Code-compliant responses. Further, Defendants produced documents, yet did not advise which documents respond to which discovery request. Please so respond.

Defendants responded to RFPD No. 3 by stating "Defendant responds that it will meet and confer with Plaintiff regarding the scope of Plaintiff's request." We do not understand the confusion regarding the scope of our request and believe it is clearly set forth in the Request. Therefore, Plaintiffs expect Defendant to both supplement this response and immediately provide the requested documents.

#### **SPECIALLY PREPARED INTERROGATORIES**

Also on or about January 18, 2008, Plaintiffs propounded Specially Prepared Interrogatories ("SROG"), Set No. One (1) upon Defendants by mail, consisting of two discovery requests.

Plaintiffs' SROG No. 2 states: "**IDENTIFY each putative CLASS MEMBER.**" SROG No. 2 requests the name, last known residence address and last known residence telephone number of Defendants' California-based "Assistant Managers" employed in Defendant's Automotive Center Division during the relevant time period.

On or about February 22, 2008, Defendants responded to SROG No. 2 as follows:

4/20/2008

EX. 20  
211

"Defendant objects to the Special Interrogatory to the extent it is vague and ambiguous as to the term "putative class members," including to the extent that Plaintiff has defined the putative class as including people in "job positions with substantially similar titles and duties in that Division." Defendant objects to the Special Interrogatory to the extent it is overbroad, oppressive, burdensome, and harassing. Defendant objects to the Special Interrogatory to the extent it requests information protected by privacy rights and conflicts with Defendant's legal obligation to maintain the confidentiality of its employee's personnel data."

Thereby, Defendants have provided no response to SROG No. 2 and Defendants' objections thereto are inappropriate for the following compelling reasons.

**PLAINTIFFS' DISCOVERY IS APPROPRIATE BECAUSE THE SCOPE OF DISCOVERY IS DIRECTLY RELEVANT TO THE SUBJECT MATTER INVOLVED**

If discovery responses are incomplete, inadequate, evasive, or the **objections are meritless or too general**, a plaintiff may bring a motion to compel further responses. Deyo v. Kilbourne (1978) 84 Cal.App.3d 771.

For the foregoing reasons, Plaintiffs believe they are entitled to the names, addresses, and telephone numbers of all of Defendants' California-based employees who are and were similarly situated to Plaintiffs herein during the relevant time period.

**California courts have reiterated that discovery provisions are to be liberally construed in favor of disclosure.** In interpreting the former Discovery Act of 1957, the Supreme Court stated in the still important seminal case of Greyhound Corp. v. Superior Court (1961) 56 Cal.2d 355, 378 that disclosure in discovery exists "as a matter of right unless statutory or public policy considerations clearly prohibit it." This concept of liberal discovery is codified in the Discovery Act of 1986. Any information that "might reasonably assist a party in evaluating the case, preparing for trial, or facilitating settlement" falls within the definition of permissible discovery. Lipton v. Superior Court (1996) 48 Cal.App.4th 1599, 1611. Discovery rules are applied liberally in favor of discovery, and "(contrary to popular belief) **fishing expeditions are permissible in some cases.**" Gonzales v. Superior Court (1995) 33 Cal.App.4th 1539, 1546 (emphasis added).

Further, all doubts about discovery are resolved in favor of disclosure. Glenfed Dev. Corp. v. Superior Court (1997) 53 Cal.App.4th 1113, 1119. By making both the scope of discovery and the court's discretion to limit it very broad, the Legislature has assured that California trial courts will continue the common law tradition of flexibility in applying legal concepts to specific discovery disputes and reaching reasonable conclusions.

Plaintiffs' discovery seeks information directly relevant to the disclosure of facts supporting key contentions. (See CCP §382) Defendants' apparent goal is to deny Plaintiffs the ability to conduct discovery into Defendants' defenses in this case and thus unfairly prejudice Plaintiffs at the time of Plaintiffs' Motion for Class Certification. Plaintiffs are entitled to straightforward, non-evasive and complete discovery responses.

**Here, Plaintiffs are simply asking for the identity of putative class members, who are key fact witnesses** both for the current purposes of class certification, as well as for the trial herein. The putative class members possess unique and important knowledge of facts concerning the duties, hours, policies, procedures, and tasks, among other things, which are at the heart of this case. The names, addresses and telephone numbers of the class members are reasonably calculated to lead to the discovery of admissible evidence. Without this information, Plaintiffs are prevented from ascertaining information essential to this case. Further, Defendants have unfettered access to this same information, which fatally prejudices Plaintiffs' ability to conduct the necessary discovery.

The Court of Appeals, Second District, considered and evaluated the purpose of the statutory authorization for the discovery of the identity and location of witnesses in City of Long Beach v.

Superior Court (1976) 64 Cal.App.3d 65, when faced with the issue of whether the names and locations of witnesses are discoverable or are protected by the attorney work product privilege. The Court held:

The legitimate interests and purposes of discovery are generally amply protected by the requirement that an adverse party is entitled to the identity and location of all persons with knowledge of relevant facts...Its basis is that persons who have relevant knowledge are not to be considered the witnesses of any particular party to the litigation. **Ensuring the availability to all parties of the right to contact** and to take depositions of these witnesses provides adequate safeguards against surprise or false testimony. Id. at 76-77 (emphasis added).

Defendants' attempt to hide the location of these individuals is inherently abhorrent to California's discovery rules. By withholding the identities of the most important witnesses, Defendants critically obstruct Plaintiffs' access to these persons. Such unilateral control over the discovery process by a party to the litigation is not what the Legislature intended. Defendants are, in essence, securing these witnesses as their own, thereby entitling Defendants to control what information is brought out in discovery.

In fact, from past experience with class certification, this Court is certainly aware that defendants often rely on declarations from the putative class members (usually current employees) in order to oppose class certification. Therefore, the Court cannot allow Defendants the opportunity to freely use this information while simultaneously seeking to bar Plaintiffs' access to the same.

Plaintiffs are entitled to this information for all the reasons expressed above as well as the facts that this information: 1) is relevant to class certification issues of commonality, typicality and numerosity; 2) is necessary for Plaintiffs to conduct an adequate precertification and/or pretrial investigation; 3) is essential for Plaintiffs to communicate with the putative class members; 4) is necessary for Plaintiffs to carry out fiduciary and ethical duties owed to the absent class members; and 5) creates no risk of prejudice to Defendants by such disclosure.

CCP §2017.010 provides in pertinent part that "any party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action or to the determination of any motion made in the action, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence."

As previously stated, here it is fundamental that Defendants are required to disclose the identity and location of persons having knowledge of particular relevant facts. Deyo v. Kilbourne, supra. Presently, Defendants have sole access to the putative class members. Plaintiffs are seeking the identity of these individuals in order to further Plaintiffs' investigative efforts in preparation for class certification.

As the court in Atari, Inc. v. Superior Court (1985) 166 Cal.App.3d 867 ("Atari") stated:

"A determination 'whether the common questions are sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of suits' cannot realistically be made until the parties have had a chance to conduct reasonable investigation." Id. at p. 870.

Likewise, in Valley Bank of Nevada v. Superior Court (1975) 15 Cal.3d 652, the plaintiffs sought customer information that the defendant claimed was confidential. The defendant objected on the grounds of relevancy and privacy. The California Supreme Court rejected that defendant's arguments, holding that the discovery of the names was relevant to the subject matter of the action. The court approved a communication to the customers, i.e., the ones who would have standing to assert a privacy objection, affording them with an opportunity to assert their interests by objecting to disclosure.

**Plaintiffs herein will suffer an immeasurable prejudice without the ability to conduct reasonable investigation in anticipation of class certification.** Plaintiffs' ability to communicate with

absent class members will be effectively silenced, while Defendants will be afforded total access to the same group. All counsel are permitted fair precertification communication pursuant to Gulf Oil Co. v. Bernard (1981) 452 U.S. 89 and its progeny. Consistent with fundamental fairness, in the absence of abuse, neither party should be precluded from investigating and preparing its case for certification. Atari, *supra*, at 873. The Atari Court approved free, open, and fair communication between any party to the litigation and the absent class members.

By denying Plaintiffs access to the classes, Defendants seek to trump the reasoning of Atari in that the Court will have imposed upon Plaintiffs a practical gag. Tilting the playing field (in Defendants' favor) in such a manner would be fundamentally unfair.

A class representative has a right, if not an outright duty, to contact all absent class members in the course of prosecuting a class action "...to discover certain information in the possession of absent class members, or to ascertain the whereabouts of other class members, in order to show the impracticability of joinder or to refine the class to ensure certification. Absent class members may also provide additional facts concerning charges raised in the complaint." Newberg on Class Actions, Fourth Edition, 2002, §15:13.

Additionally, the late Professor Newberg also offered other legitimate reasons why class counsel may wish to communicate with absent class members prior to certification:

- (1) the filing of a class complaint tolls the statute of limitations, and this information would be of value to class members who may be uncertain how they may preserve their claims;
- (2) in protracted litigation, when the court does not reach an early determination of the class issues, the class counsel may wish to notify absent class members, who may have learned of the action through attendant publicity, of the status of litigation;
- (3) because absent class members need not enter an appearance or intervene in the action, they are entitled to rely on the class action attorney to prosecute the litigation on their behalf;
- (4) communications with absent class members are appropriate as long as they are not considered abusive within the guidelines created by Gulf Oil Co. v. Bernard. Newberg on Class Actions, Fourth Edition, 2002, §15:12.

All of the reasons enumerated above are applicable to the instant case. Without the identity of the absent class members, Plaintiffs will be unable to carry out even one of these tasks.

**Class counsel and class representatives are fiduciaries to the absent class members.** *See Newberg on Class Actions*, Fourth Edition, 2002, §15:3. As such, they must vigorously investigate and prosecute this action. It is only through the ability to communicate with the absent class members that the class representative and class counsel will be able to fulfill their ethical and fiduciary obligations. It is also noteworthy that Plaintiffs' interest in effectively investigating and vigorously prosecuting this action on the behalf of the absent class members outweighs any perceived intrusion into the privacy of those very same absent class members. It would be improper to gag the class representative and class counsel by sustaining Defendant's objections.

In advancing the broad latitude of discovery, CCP §2017.010 provides that "Discovery may be obtained of the identity and location of persons having knowledge of discoverable matter..." Thus, the names, home addresses, and telephone numbers which are essential locating information are authorized under this CCP section. In fact, form interrogatories requesting this particular information have been expressly approved by the California Judicial Council.

Unquestionably, the names, addresses, and telephone numbers of class members and witnesses are reasonably calculated to lead to the discovery of admissible evidence since the class certification briefings will certainly contain information from that pool of witnesses. It would be interesting to see if



Defendants would stipulate that no member of this witness pool, to wit, absent class members, will provide any declaration testimony in its class certification briefing. Absent such a stipulation this witness pool is plainly relevant for purposes of discovery.

**Defendants' interests are diametrically opposed to those of the absent class members, but Plaintiffs and Plaintiffs' counsel have an ethical and fiduciary duty to protect those absent class members.** In fact, one perspective on the relationship between the absent class and the class counsel would describe it as a "constructive attorney-client relationship." Newberg on Class Actions, Fourth Edition, 2002, §15:3. Any attempt by Defendants to "preserve the privacy rights" of the very individuals whose rights Defendants have allegedly violated is disingenuous.

Recently, the Second Appellate District confirmed parties' rights to names, addresses and telephone numbers in Parris v. Superior Court (2003) 109 Cal.App.4th 285 ("Parris"). The Appellate Court held that precertification communication with potential class members is protected by the First Amendment to the United States Constitution and remanded the court's denial of identification information, as there was no showing of potential for abuse.

#### **A. DEFENDANTS' "PRIVACY" OBJECTION IS WITHOUT MERIT**

Defendants object to SROG No. Two, asserting: "Defendant objects to the Special Interrogatory to the extent it requests information protected by privacy rights and conflicts with Defendant's legal obligation to maintain the confidentiality of its employee's personnel data." Said objection is without merit.

The right to privacy is not absolute; it may be abridged to accommodate a compelling interest. Moskowitz v. Superior Court (1982) 137 Cal.App.3d 313, 316; El Dorado Savings & Loan Association v. Superior Court (1987) 190 Cal.App.3d 345. One such interest is "the historically important state interest of facilitating the ascertainment of truth in connection with legal proceedings." Moskowitz, supra at 316.

The language of CCP §2017.010 is indeed broad and explicitly entitles each party to discover the identity of witnesses, which include class members. To use the right to privacy to preclude the release of the names of class members and witnesses violates the basic tenets underlying discovery. There is an expressed compelling state interest in the "ascertainment of truth" in these proceedings. That interest is particularly acute in instances such as this, in which the defendant-employer has the upper hand with respect to critical information such as the home addresses, and telephone numbers of class members/witnesses. The critical nature of this information in a case of this nature makes it that much more compelling, demanding that any minimal privacy right accorded to their location (the home addresses and telephone numbers of these persons), is outweighed by the public policy of fair and open communication - toward the ultimate goal of ascertaining the truth.

To the extent that any of these individuals continue to work at Defendants' locations, it would be impossible and improper to discuss Plaintiffs' allegations with them at work. Moreover, the discussion of personal legal matters such as this is properly conducted outside of the workplace. Plaintiffs' ability to conduct their investigation outside of Defendants' place of business not only avoids any interference with Defendants' operations but also ensures the confidentiality of the communication. Finally, with respect to those persons who are no longer employed by the company, Plaintiffs are completely without means to contact them unless Defendants provide this information.

Accordingly, Defendants' "privacy" objection is without merit.

#### **A. DEFENDANTS' "VAGUE AND AMBIGUOUS" OBJECTION IS WITHOUT MERIT**

Defendants object to SROG No. Two, asserting: "Defendant objects to the Special Interrogatory to the extent it is vague and ambiguous as to the term "putative class members," including to the extent that Plaintiff has defined the putative class as including people in "job positions with substantially

similar titles and duties in that Division.” Said objection is without merit. Defendant has been able to respond to Special Interrogatory No. 1, with a number certain of the employees at issue. Therefore, Defendant can ascertain for which individuals Plaintiffs seek the identity.

**A. DEFENDANTS’ “OVERBROAD, OPPRESSIVE, BURDENSOME AND HARASSING” OBJECTION IS WITHOUT MERIT**

Defendants object to SROG No. Two, asserting: “Defendant objects to the Special Interrogatory to the extent it is overbroad, oppressive, burdensome, and harassing.” Said objection is without merit.

The production of information sought by this discovery is no more than what is necessary for Plaintiffs to conduct an investigation and prepare this case for certification and/or trial. As discussed infra, courts have upheld the disclosure of more information than presently sought. Further, it is absurd to consider a request for contact information for putative class members in a class action wage and hour lawsuit as excessive. Accordingly, Defendants’ “burdensome and oppressive” objection is without merit.

As previously advised, if a response to this meet and confer letter, preferably consisting of Defendants’ supplemental response to the requested information, is not received in Plaintiffs’ counsel’s office by 4:00 p.m. on March 14, 2008, this letter shall serve as Defendants’ notice that Plaintiffs will immediately thereafter begin to prepare the appropriate motion to compel the requested information.

Should you have any questions or concerns about this matter, please do not hesitate to contact our office. Thank you in advance for your anticipated cooperation and consideration.

Regards,  
Gregg Lander

---

Gregg Lander, Esq.  
LAW OFFICES OF KEVIN T. BARNES  
5670 Wilshire Boulevard, Suite 1460  
Los Angeles, CA 90036-5627  
Ph: (323) 549-9100 / Fax: (323) 549-0101  
Email: Lander@kbarnes.com  
Web: www.kbarnes.com

---

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4/20/2008

EX. 20  
216



**Gregg Lander**

---

**From:** Gregg Lander [lander@kbarnes.com]  
**Sent:** Thursday, March 27, 2008 6:17 PM  
**To:** JBlakeslee@winston.com  
**Cc:** Lander@kbarnes.com; Barnes@kbarnes.com; DP; jantonelli@antonellilaw.com; jcarney@antonellilaw.com  
**Subject:** Sears M&C re Discovery Set 1

3/27/08

Re: Jimenez v. Sears

Counsel,

We have received and reviewed your March 14, 2008 letter in response to my March 3, 2008 letter regarding Plaintiff's first set of discovery, and respond as follows:

Regarding RFPD 1 and 2, Defendant's response does not comply with the CCP in that Defendant states that it produced documents "that it has located in its possession, custody, or control." Please review CCP 2031.210, which requires you to advise whether you are complying with the demand, and if not, a statement in compliance with CCP 2031.220 and/or CCP 2031.230. Here, Defendant's response is unclear as to whether any documents that Defendant attempted to locate never existed, were destroyed, have been lost, misplaced, etc. Please provide a CCP-compliant response.

Further, while you are correct that documents may be produced as they are kept in the usual course of business, etc., pursuant to CCP 2031.280(a), this is with regard to each request, not all requests. In short, Defendant cannot simply dump documents on Plaintiff and expect Plaintiff to figure out which documents respond to which request. Please so advise.

Regarding RFPD #3, the request is certainly not improper, and in fact is an extremely standard and commonplace request in this type of litigation. We are willing to consider an appropriate confidentiality agreement if Defendant will respond to this RFPD. Please forward the same.

Regarding SROG #2, the putative class members' right to privacy is not absolute and must be balanced against Plaintiff's right to investigate his claims. In order to alleviate Defendant's concern for the putative class members' interests, we are willing to also enter a protective order that will ensure that the requested information will only be utilized for this litigation. Please advise if this is acceptable, and if so, forward the same.

Given that our deadline to move to compel this information is fast approaching on April 11, 2008, we ask for a reply to this correspondence by 4:00 p.m. on 4/2/08. If we do not so hear, we will assume that you wish the Court to intervene.

Regards,  
Gregg Lander

---

Gregg Lander, Esq.  
LAW OFFICES OF KEVIN T. BARNES

4/20/2008

EX. 20  
217

5670 Wilshire Boulevard, Suite 1460  
Los Angeles, CA 90036-5627  
Ph: (323) 549-9100 / Fax: (323) 549-0101  
Email: [Lander@kbarnes.com](mailto:Lander@kbarnes.com)  
Web: [www.kbarnes.com](http://www.kbarnes.com)

---

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4/20/2008

EX. 20  
218

## WINSTON & STRAWN LLP

35 WEST WACKER DRIVE  
CHICAGO, ILLINOIS 60601-9703

43 RUE DU RHONE  
1204 GENEVA, SWITZERLAND

99 GRESHAM STREET  
LONDON EC2V 7NG

WRITER'S DIRECT DIAL NUMBER

(213) 615-1803  
jblakeslee@winston.com

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333 SOUTH GRAND AVENUE  
LOS ANGELES, CALIFORNIA 90071-1543

(213) 615-1700

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101 CALIFORNIA STREET  
SAN FRANCISCO, CALIFORNIA 94111-5894

1700 K STREET, N.W.  
WASHINGTON, D.C. 20006-3817

April 2, 2008

**VIA FACSIMILE & U.S. MAIL**

Gregg Lander

Law Offices of Kevin T. Barnes  
5670 Wilshire Boulevard, Suite 1460  
Los Angeles, CA 90036-5627

Re: **Jimenez v. Sears**

Dear Mr. Lander:

This is in response to the e-mail that you sent me on March 27, 2008. As I requested in my March 14 letter, please address all correspondence to me *and* Jessie Kohler. Also, please send your correspondence via facsimile or U.S. mail, as we receive a large volume of e-mail and it is easy to inadvertently delete an e-mail or miss it because it goes to a junk mail folder.

With respect to Request for Production Nos. 1 and 2, as stated in my prior letter, Defendant has produced all documents in its custody, possession or control to which no objection was made. Furthermore, we are not aware of any issues in locating documents responsive to your requests. If you insist upon amended responses to this effect, let us know and we will provide them. Please note, however, that the revised responses will not change the substance of the original responses, i.e. that Defendant has already agreed to produce all responsive documents in its custody, possession or control.

As for Defendant's duties under Code of Civil Procedure section 2031.280(a), we stand by our position that Defendant has already complied with the statute.

Regarding Request for Production No. 3, as set forth in my previous letter, we believe that the request is improper but are nevertheless willing to produce documents evidencing the hours that plaintiff worked, subject to an appropriate confidentiality agreement. A draft Stipulated Confidentiality and Protective Order is enclosed.

Finally, since your e-mail does not address our inquiry about whether you have obtained the consent of any current or former Sears employees to the disclosure of their personal

LA:209481.1

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WINSTON & STRAWN LLP

Gregg Lander  
April 2, 2008  
Page 2

information, we assume that you have not done so and therefore may not provide such information in response to Interrogatory No. 2 in the absence of a court order.

Best regards,

A handwritten signature in black ink, consisting of several overlapping loops and a final horizontal stroke, positioned above the printed name.

Julia Lapis Blakeslee

Enclosure  
cc: Jessie Kohler

LA:209481.1

EX. 20  
220

**Gregg Lander**

---

**From:** Gregg Lander [lander@kbarnes.com]  
**Sent:** Thursday, April 03, 2008 3:07 PM  
**To:** JBlakeslee@winston.com; JKohler@winston.com  
**Cc:** Lander@kbarnes.com; Barnes@kbarnes.com; DP; jantonelli@antonellilaw.com; jcarney@antonellilaw.com  
**Subject:** Sears (v. Jimenez) Meet and Confer re Discovery Set 1

4/3/08

Re: Jimenez v. Sears

Counsel,

We have received your April 2, 2008 letter regarding the above-referenced matter and respond as follows.

As a preliminary matter, I appreciate that you prefer fax or mail. I, however, prefer email and that is how I intend to correspond. Regarding Ms. Kohler, I meant no disrespect; I simply was not provided with her email address. I will be happy to copy Ms. Kohler on all emails, have researched her email address, and copy her here.

Re: RFPD 1 & 2, please serve CCP-compliant supplemental responses.

Re: RFPD 3, please send a copy of the Stipulated Confidentiality and Protective Order in Word/WP so I can review and revise as necessary; if I have revisions, I will provide you with a redline version.

Regarding SROG 2, I assume you are hinting that you would like to send a privacy notice by way of a third party administrator. Although we believe that class members' privacy rights are not absolute, as an attempt to meet and confer in good faith toward an informal resolution of this discovery dispute, we are willing to consider such a privacy notice. However, we would only agree to such a mailing if the parties split the cost 50-50 and Defendant agrees that only Plaintiff's counsel will be provided with the list of individuals who do not opt-out of disclosure of their name, address and phone number. Please so advise if these are acceptable terms and if so, I will draft a notice to send to the class. As our motion to compel is a week away, we ask that you so advise by 4:00 p.m. tomorrow, April 4, 2008.

Thank you in advance for your consideration.

Regards,  
Gregg Lander

---

Gregg Lander, Esq.  
LAW OFFICES OF KEVIN T. BARNES  
5670 Wilshire Boulevard, Suite 1460  
Los Angeles, CA 90036-5627  
Ph: (323) 549-9100 / Fax: (323) 549-0101  
Email: Lander@kbarnes.com  
Web: www.kbarnes.com

---

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4/20/2008

EX. 20  
221

**Gregg Lander**

---

**From:** Gregg Lander [lander@kbarnes.com]  
**Sent:** Thursday, April 17, 2008 7:37 PM  
**To:** 'lander@kbarnes.com'; 'JKohler@winston.com'  
**Cc:** 'Barnes@kbarnes.com'; 'DP'; 'jantonelli@antonellilaw.com'; 'jcarney@antonellilaw.com'; 'Chui, Audrey Shen'; 'DP'  
**Subject:** RE: Sears (v. Jimenez) Meet and Confer re Discovery Set 1  
**Importance:** High

Counsel,

As we received no response from you, please be advised that we will file our Motion to Compel on Monday. We will be requesting from the Court the entire class list, without the need for any privacy notice.

If you wish to reconsider your position regarding "opt-in" versus "opt-out," please so advise.

Regards,  
Gregg Lander

---

**From:** Gregg Lander [mailto:lander@kbarnes.com]  
**Sent:** Wednesday, April 16, 2008 3:37 PM  
**To:** JKohler@winston.com  
**Cc:** Barnes@kbarnes.com; 'DP'; jantonelli@antonellilaw.com; jcarney@antonellilaw.com; 'Chui, Audrey Shen'; Lander@kbarnes.com; 'Blakeslee, Julia Lapis'  
**Subject:** RE: Sears (v. Jimenez) Meet and Confer re Discovery Set 1

I believe you are correct that names, addresses and telephone numbers is the only issue re: SROG1.

If I understand your proposal, you are saying that you would agree to an "opt-in" notice but not an "opt-out" notice. If so, obviously that is directly opposite to California law as set forth in Pioneer and Belaire-West. As such, we cannot agree.

Please advise if you will agree to an "opt-out" notice. Otherwise, we will move to compel the entire list, without any privacy notice.

Regards,  
Gregg Lander

---

**From:** Kohler, Jessie A. [mailto:JKohler@winston.com]  
**Sent:** Wednesday, April 16, 2008 3:23 PM  
**To:** 'lander@kbarnes.com'  
**Cc:** Barnes@kbarnes.com; 'DP'; jantonelli@antonellilaw.com; jcarney@antonellilaw.com; Chui, Audrey Shen  
**Subject:** RE: Sears (v. Jimenez) Meet and Confer re Discovery Set 1

Gregg:

4/20/2008

EX. 20  
222

I believe the only outstanding issue is with regard to the disclosure of names and addresses -- the other issues were addressed in correspondence to you and we are preparing amended responses to the first set of interrogatories as agreed. Please let me know if that is incorrect.

With regard to the disclosure of names and addresses, we would be willing to agree to a notice to the putative class in which they may consent to the disclosure of the information. However, we will not agree to a notice that requires an affirmative objection by the putative class. Please let us know your response to this proposal. Jessie

---

**From:** Gregg Lander [mailto:lander@kbarnes.com]  
**Sent:** Wednesday, April 16, 2008 2:43 PM  
**To:** Kohler, Jessie A.; Blakeslee, Julia Lapis  
**Cc:** Barnes@kbarnes.com; 'DP'; jantonelli@antonellilaw.com; jcarney@antonellilaw.com; Lander@kbarnes.com  
**Subject:** RE: Sears (v. Jimenez) Meet and Confer re Discovery Set 1  
**Importance:** High

Counsel,

We have not received a substantive response to my 4/3/08 email regarding Plaintiff's Special Interrogatories, Set No. 1.

Plaintiff's deadline to move to compel this information is 4/21/08. Therefore, unless we hear from you by 3:00 p.m. tomorrow, 4/17/08 regarding reaching some agreement on this issue, we will assume that a motion to compel is necessary to resolve this dispute.

Please be advised that we are also not interested in any further continuance of our motion deadline, and wish to move this matter forward.

Pursuant to your request, I will also fax this email to Ms. Kohler, as it contains a deadline within which to respond.

Thank you for your consideration.

Regards,  
Gregg Lander

---

**From:** Kohler, Jessie A. [mailto:JKohler@winston.com]  
**Sent:** Monday, April 07, 2008 3:14 PM  
**To:** 'lander@kbarnes.com'; Blakeslee, Julia Lapis  
**Cc:** Barnes@kbarnes.com; 'DP'; jantonelli@antonellilaw.com; jcarney@antonellilaw.com  
**Subject:** RE: Sears (v. Jimenez) Meet and Confer re Discovery Set 1

Gregg:

We are looking into your last proposal and will get back to you. We are fine with extending the motion to compel deadline. Let's say April 21? I should be able to let you know in the next several days. Thanks, Jessie

4/20/2008

EX. 20  
223



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**From:** Gregg Lander [mailto:lander@kbarnes.com]  
**Sent:** Monday, April 07, 2008 3:10 PM  
**To:** lander@kbarnes.com; Blakeslee, Julia Lapis; Kohler, Jessie A.  
**Cc:** Barnes@kbarnes.com; 'DP'; jantonelli@antonellilaw.com; jcarney@antonellilaw.com  
**Subject:** RE: Sears (v. Jimenez) Meet and Confer re Discovery Set 1  
**Importance:** High

Counsel,

Pursuant to the below email, we requested that Defendant respond by 4:00 p.m. on April 4, 2008. As far as I know, no such response was received.

Please be advised that if we do not hear from you by 4:00 p.m. today regarding this issue, we see no choice but to file a Motion to Compel. Although I believe it is in the best interest of the parties to continue to meet and confer on this issue, Plaintiff has a deadline to file said Motion to Compel of April 11, 2008. Of course if you wish to briefly continue this deadline to facilitate the meet and confer, we will agree to the same.

Please advise.

Regards,  
Gregg Lander

---

**From:** Gregg Lander [mailto:lander@kbarnes.com]  
**Sent:** Thursday, April 03, 2008 3:07 PM  
**To:** JBlakeslee@winston.com; JKohler@winston.com  
**Cc:** Lander@kbarnes.com; Barnes@kbarnes.com; DP; jantonelli@antonellilaw.com; jcarney@antonellilaw.com  
**Subject:** Sears (v. Jimenez) Meet and Confer re Discovery Set 1

4/3/08

Re: Jimenez v. Sears

Counsel,

We have received your April 2, 2008 letter regarding the above-referenced matter and respond as follows.

As a preliminary matter, I appreciate that you prefer fax or mail. I, however, prefer email and that is how I intend to correspond. Regarding Ms. Kohler, I meant no disrespect; I simply was not provided with her email address. I will be happy to copy Ms. Kohler on all emails, have researched her email address, and copy her here.

Re: RFPD 1 & 2, please serve CCP-compliant supplemental responses.

Re: RFPD 3, please send a copy of the Stipulated Confidentiality and Protective Order in Word/WP so I can review and revise as necessary; if I have revisions, I will provide you with a redline version.

4/20/2008

EX. 20  
224

Regarding SROG 2, I assume you are hinting that you would like to send a privacy notice by way of a third party administrator. Although we believe that class members' privacy rights are not absolute, as an attempt to meet and confer in good faith toward an informal resolution of this discovery dispute, we are willing to consider such a privacy notice. However, we would only agree to such a mailing if the parties split the cost 50-50 and Defendant agrees that only Plaintiff's counsel will be provided with the list of individuals who do not opt-out of disclosure of their name, address and phone number. Please so advise if these are acceptable terms and if so, I will draft a notice to send to the class. As our motion to compel is a week away, we ask that you so advise by 4:00 p.m. tomorrow, April 4, 2008.

Thank you in advance for your consideration.

Regards,  
Gregg Lander

-----  
Gregg Lander, Esq.  
LAW OFFICES OF KEVIN T. BARNES  
5670 Wilshire Boulevard, Suite 1460  
Los Angeles, CA 90036-5627.  
Ph: (323) 549-9100 / Fax: (323) 549-0101  
Email: Lander@kbarnes.com  
Web: www.kbarnes.com  
-----

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\*\*\*\*\*

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\*\*\*\*\*

Any tax advice contained in this email was not intended to be used, and cannot be used, by you (or any other taxpayer) to avoid penalties under the Internal Revenue Code of 1986, as amended.

Kevin T. Barnes, Esq. (#138477)  
 Gregg Lander, Esq. (#194018)  
 LAW OFFICES OF KEVIN T. BARNES  
 5670 Wilshire Boulevard, Suite 1460  
 Los Angeles, CA 90036-5627  
 Tel.: (323) 549-9100 / Fax: (323) 549-0101  
 Email: Barnes@kbarnes.com

Joseph Antonelli, Esq. (#137039)  
 Janelle Carney, Esq. (#201570)  
 LAW OFFICE OF JOSEPH ANTONELLI  
 1000 Lakes Drive, Suite 450  
 West Covina, CA 91790-2918  
 Tel.: (626) 917-6228 / Fax: (626) 917-7686  
 Email: JAntonelli@antonellilaw.com

Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED**

JOSE JIMENEZ, on behalf of himself and all  
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New  
 York corporation; and DOES 1 to 100,  
 inclusive,

Defendants.

Case No.: BC383006  
 Dept.: 45  
 Honorable: Mel Red Recana

**Hearing:**

**Date: June 6, 2008**  
**Time: 8:30 a.m.**

**CLASS ACTION**

**[PROPOSED] ORDER REGARDING  
 PLAINTIFFS' MOTION TO COMPEL  
 RESPONSE TO PLAINTIFFS'  
 SPECIAL INTERROGATORIES, SET  
 NO. ONE (1), INTERROGATORY NO.  
 TWO**

Action Filed: December 28, 2007

On June 6, 2008 at 8:30 a.m. or as soon thereafter as the matter could be heard, in  
 Department 45 of the above-titled Court, the Honorable Mel Red Recana presiding, Plaintiff's  
 Motion to Compel Response to Plaintiff's Special Interrogatories, Set No. One (1), Interrogatory  
 No. Two, came on regularly for hearing. All parties were present and represented by counsel.  
 Good cause having been shown therefore, IT IS ORDERED THAT:  
 1. Plaintiffs' Motion is GRANTED in its entirety. The requested information will be  
 delivered to Plaintiffs' counsel within twenty (20) days

- 1 -

**ORDER REGARDING PLAINTIFFS' MOTION TO COMPEL RESPONSE TO PLAINTIFFS'  
 SPECIAL INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO**

KEVIN T. BARNES  
 5670 WILSHIRE  
 BLVD. SUITE 1460  
 LOS ANGELES, CA  
 90036-5614  
 TEL.: (323) 549-9100  
 FAX: (323) 549-0101

2. It is further Ordered as follows:

DATED: \_\_\_\_\_ Judge of the Superior Court

- 2 -

KEVIN T. BARNES  
5670 WILSHIRE  
BLVD. SUITE 1460  
LOS ANGELES, CA  
90036-5614  
TEL.: (323) 549-9100  
FAC: (323) 549-0101

ORDER REGARDING PLAINTIFFS' MOTION TO COMPEL RESPONSE TO PLAINTIFFS'  
SPECIAL INTERROGATORIES, SET NO. ONE (1), INTERROGATORY NO. TWO

EX. 20  
227

Kevin T. Barnes, Esq. (#138477)  
 Gregg Lander, Esq. (#194018)  
 LAW OFFICES OF KEVIN T. BARNES  
 5670 Wilshire Boulevard, Suite 1460  
 Los Angeles, CA 90036-5627  
 Tel.: (323) 549-9100 / Fax: (323) 549-0101  
 Email: Barnes@kbarnes.com

Joseph Antonelli, Esq. (#137039)  
 Janelle Carney, Esq. (#201570)  
 LAW OFFICE OF JOSEPH ANTONELLI  
 1000 Lakes Drive, Suite 450  
 West Covina, CA 91790-2918  
 Tel.: (626) 917-6228 / Fax: (626) 917-7686  
 Email: JAntonelli@antonellilaw.com

Attorneys for Plaintiff, JOSE JIMENEZ, on behalf of himself and all others similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES - CENTRAL DISTRICT-UNLIMITED**

JOSE JIMENEZ, on behalf of himself and all  
 others similarly situated,

Plaintiffs,

v.

SEARS, ROEBUCK AND CO., a New  
 York corporation; and DOES 1 to 100,  
 inclusive,

Defendants.

Case No.: BC383006  
 Dept.: 45  
 Honorable: Mel Red Recana

**Hearing:**  
**Date: June 6, 2008**  
**Time: 8:30 a.m.**

**CLASS ACTION**

**PROOF OF SERVICE**

Action Filed: December 28, 2007

///

///

///

**PROOF OF SERVICE****STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am over the age of 18 years and not a party to this action. My business address is 5670 Wilshire Boulevard, Suite 1460, Los Angeles, California 90036-5627, which is located in Los Angeles County, where the service herein occurred.

On the date of execution hereof, I served the attached document(s) described as:

**PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL RESPONSE TO PLAINTIFF'S SPECIAL INTERROGATORIES, SET NO. ONE (1); INTERROGATORY NO. 2; DECLARATION OF GREGG LANDER IN SUPPORT THEREOF; SEPARATE STATEMENT IN SUPPORT THEREOF; [PROPOSED] ORDER**

on the interested parties in this action, addressed as follows:

Jessie A. Kohler, Esq.  
WINSTON & STRAWN LLP  
333 South Grand Avenue, 38th Floor  
Los Angeles, CA 90071  
Tel.: (213) 615-1700 / Fax: (213) 615-1750  
Email: HShen@winston.com

Joseph Antonelli, Esq.  
Janelle Carney, Esq.  
LAW OFFICE OF JOSEPH ANTONELLI  
1000 Lakes Drive, Suite 450  
West Covina, CA 91790-2918  
Tel.: (626) 917-6228 / Fax: (626) 917-7686  
Email: JAntonelli@antonellilaw.com

using the following service method(s):

  X   **VIA MAIL:** I deposited the document(s) to be served at: **5670 Wilshire Boulevard, Los Angeles, CA**, which is a mailbox or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person(s) on whom the document(s) is/are to be served, at the office address as last given by that/those person(s), otherwise at that/those person(s)' place(s) of residence. I am aware that on motion of any party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing stated herein.

I DECLARE under penalty of perjury that the foregoing is true and correct.

Executed on **May 9, 2008**, at Los Angeles, California.

\_\_\_\_\_  
**David Pham**